Florida TaxWatch

TAXWATCH COVID-19 TAXPAYER TASK FORCE

FINAL REPORT

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TAXWATCH
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Florida TaxWatch

Dear Fellow Taxpayers,

The COVID-19 pandemic has caused many, many problems for the people of Florida and their government at all levels. While the government's response has and must continue to take many forms – from public safety mandates to public health interventions – and been costly to public coffers, the taxpayer burdens created by the pandemic must be an important component that has not yet received appropriate attention.

When businesses are without customers and people are without jobs, tax burdens become amplified. For many taxpayers, paying tax bills will be difficult, if not impossible. With layoffs, sick leave, and remote working depleting companies' tax administration staff, the compliance burden also increased. Other questions sprang up as the virus took hold. What is massive unemployment going to do to Reemployment Assistance Taxes? What about the increased costs for businesses to protect their employees and customers? What can be done to help some of the economic sectors and workers most severely impacted? How can we help the economy and Floridians bounce back?

Therefore, in close partnership with our volunteer leadership and network of subject matter experts and business partners, Florida TaxWatch formed the COVID-19 Taxpayer Task Force to discuss opportunities and options to help Florida recovery and ease the burdens created by the pandemic on Florida taxpayers.

Made up of public policy professionals, tax and budget experts, and leaders of both small and large businesses, the Task Force was established to identify those areas of state tax policy that could be addressed both immediately and in the long term to provide Florida's businesses—and their employees and customers—appropriate relief and assistance.

The Task Force and Florida TaxWatch recognize that there are other policy challenges that must be addressed to help the state fully recover from the pandemic (e.g. eviction and housing needs, healthcare costs, unemployment, etc.), but the Task Force was brought together to identify specific tax policy issues, and this report is focused on that policy area.

The success of Florida's economy may hang on the decisions made in the next several months, and it is our sincere hope that the Governor, Cabinet, Legislature, state agency leadership and local officials take the following recommendations as a starting place to determine the best course of action on tax policy for the state moving forward.

Your partners in building a better Florida,

Dominic M. Calabro	Karen a. Lake CPA
Dominic M. Calabro	Karen Lake
President & CEO	*Task Force Chair*
Florida TaxWatch	*Berkowitz Pollack Brant Advisors & CPAs*

Introduction

The public health emergency brought on by COVID-19 has had a profound impact on Florida and the taxpaying citizens of the Sunshine State, and the impact is still evolving. Since the first diagnosed case in Florida, there have been more than 577,000 confirmed cases and more than 9,900 deaths (as of August 19).[1]

Florida responded to the virus by issuing stay-at-home orders and closing non-essential businesses. The number of visitors to our state fell by 68 percent, a huge blow for an economy that depends so heavily on tourism.[2] The U.S. Gross Domestic Product (GDP) fell by a record 32.9 percent in the second quarter of 2020 (April-June),[3] and state economists estimate Florida's contraction will exceed that. Unemployment in Florida peaked in May at 1.319 million (13.7%) persons without jobs; Florida's unemployment rate in February was 2.8 percent.[4]

The state has taken limited action to help taxpayers. In March, the Florida Department of Revenue (DOR) issued an emergency waiver to extend filing deadlines for sales taxes, tourist development taxes, sold waste fees, and prepaid 9-1-1 fees. In April, DOR extended the deadline to file corporate income taxes for taxpayers with due dates in May, June, and July,[5] and Governor DeSantis suspended the imposition of documentary stamp taxes on the Paycheck Protection Loans authorized by the federal CARES Act.[6]

Much more needs to be done. Property taxes are developing into a big issue. Truth in Millage (TRIM) notices are being mailed out this month and many businesses and rental property owners know that the value of their property when it was assessed (January 1, before COVID-19 arrived) was higher than it is now.

General Revenue (GR) collections fell $1.9 billion short of projections for the fiscal year that ended on June 30, 2020 and the revenue estimates for the current year and next year were recently reduced by $3.4 billion and $2.0 billion, respectively. It is still projected that the state will avoid a budget deficit but that was made possible by depositing $5.586 billion in federal aid from the CARES Act into the General Revenue Fund.[7] The projected surplus likely only exists on paper. There is approximately $950 million counted towards that surplus that the state still must distribute to local governments. It is also not certain the state will be able to use all the CARES funds to supplant GR spending in the current budget.

The state should explore opportunities to use the CARES funds to replace or offset some of the fiscal impact of this report's recommendations. There is already precedent for using CARES Act funds for one of the recommendations: a program to provide direct grants to businesses for expenses associated with ensuring the health and safety of employees and patrons in response to the pandemic.

This budget year and the next (at least) will be tough, but the Governor's $1 billion in vetoes in the new budget and his plan to hold back 6 percent of agency operational budgets will help. Florida TaxWatch released

1 Florida Department of Health, last accessed August 19, 2020 https://floridahealthcovid19.gov/

2 Office of Economic and Demographic Research, results of the Florida Economic Estimating Conference, July 17, 2020. http://www.edr.state.fl.us/Content/conferences/fleconomic/index.cfm

3 U.S. Bureau of Economic Analysis, Gross Domestic Product, 2nd Quarter 2020 (Advance Estimate) and Annual Update, July 30, 2020. https://www.bea.gov/news/2020/gross-domestic-product-2nd-quarter-2020-advance-estimate-and-annual-update

4 U.S. Bureau of Labor Statistics, Florida Economy at a Glance, July 31, 2020. https://www.bls.gov/eag/eag.fl.htm

5 Florida Department of Revenue, Taxpayer Information Regarding COVID-19. https://floridarevenue.com/taxes/Pages/taxpayerInfoCovid19.aspx

6 Office of the Governor, Executive Order number 20-95, Documentary Stamps for SBA Loans, April 4, 2020. https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf

7 Florida TaxWatch, Budget Watch, General Revenue Estimates for the Current Budget Year Reduced by $3.4 Billion, August 2020.

a report in June 2020 with recommendations for cost savings and reducing spending, both in the short and long term, offering options to save up to $6 billion.[8]

The pandemic has decimated government revenues, and there will be efforts to increase or create new taxes to help recoup those losses. But state and local government officials must remember that revenues are down because the economy is struggling mightily. Florida citizens and businesses are hurting. Now is not the time to raise taxes, placing another drag on the damaged economy and putting more jobs in jeopardy. Instead, government should look for additional ways to help taxpayers with the financial and compliance burdens they face. Doing this will cost money and require tough decisions.

The "new normal" created by the coronavirus requires some new thinking about taxes and was the genesis for Florida TaxWatch forming the COVID-19 Taxpayer Task Force, comprised of public policy professionals, tax experts, and business leaders. During its work over the Spring and Summer of 2020, the Task Force developed two sets of recommendations:

- The first set addresses taxpayer burdens directly created by the pandemic. Most of these would be temporary and require action as soon as possible.
- The second set contains more long-term recommendations to help the economy recover and ultimately prosper. Many of these are new, but some are long-time recommendations of Florida TaxWatch and others that are represented on the COVID-19 Taxpayer Task Force.

These recommendations represent the hard work and commitment of many dedicated Floridians, and Florida TaxWatch is honored to present their work to the state's policymakers to help get Florida back on its feet.

8 Florida TaxWatch, Bringing Florida's Budget Back From COVID-19: A Roadmap for a Responsible Recovery, June 18, 2020.

Florida TaxWatch COVID-19 Taxpayer Task Force Recommendations

Recommendations to Address Taxpayer Burdens Created by the Pandemic

These recommendations should be enacted as soon as possible. The Governor, Cabinet, and the Department of Revenue should implement or move forward any recommendation to the extent possible under their powers. If the Legislature comes back in special session to address the FY 2020-21 budget or any other reason, these should be considered then as well.

PROPERTY TAXES

1. **Extend the property tax payment deadline, allow installment payments, waive penalties and interest**

   Florida currently allows quarterly installment payments for prepayment of property taxes, but all taxes must still be paid by April 30 of each year. With so many people out of work and so many businesses and landlords struggling, it is likely many taxpayers will find it difficult to make their 2020 tax year payments (due April 30, 2021). Florida should enact legislation or take executive/administrative action to extend the deadline for payment and allow installment payments without penalty or interest if the taxpayer stays current and can demonstrate such need. This should be available to all taxpayers—residential and non-residential—but it should be limited to those for which the COVID-19 pandemic caused economic damage, job loss, or inability to collect rental income. Application would be made to the County Tax Collector by March 1, 2021.

2. **Provide disaster relief for commercial and non-homestead residential properties**

   A disaster/calamity provision should be provided to specifically address economic damage resulting from the impact of loss of access to, or use of, commercial and non-homestead residential real property related to the COVID-19 pandemic. This provision should expressly include relief for landlords of properties where rents were not paid due to the eviction relief provided in Executive Order 20-94.[9] The Florida Legislature could enact a structure similar to that previously used to provide relief related to real property improvements damaged or destroyed by Hurricanes Hermine, Matthew, or Irma in Section 197.318, Florida Statutes. The relief would be equivalent to the annualized value of economic damage suffered, which would be calculated as a specified amount for each qualifying property, pursuant to guidelines developed by the Florida Legislature and Department of Revenue. The economic damage value could form the basis for either an adjustment to the 2020 taxable value, or without effect on the 2020 just and/or taxable value—a direct adjustment or offset to 2020 ad valorem taxes. Priority should be placed on 2020 relief for impacted taxpayers, and if timing does not permit legislative action, the Governor and Cabinet should consider potential options for implementation of administrative measures through the Department of Revenue. A program through which the economic damage value could form the basis for a credit against future ad valorem taxes could be considered (only) if direct 2020 relief cannot be accomplished. The Task Force notes that some Property Appraisers have also raised the general idea of a credit and some members have approached legislators in that regard.

9 Office of the Governor, Executive Order #20-94, Emergency Management - COVID-19 - Mortgage Foreclosure and Eviction Relief, April 2, 2020. Extended by Executive Orders #20-121, May 14, 2020, #20-137, June 1, 2020, #20-159, June 30, and #20-180, July 29, 2020. https://www.flgov.com/2020-executive-orders/

3. Provide tangible personal property relief

Ad valorem tax relief for economic damages should not be limited to real property. Use of, and access to, business tangible personal property have been severely impacted as well. As guidelines for calculation of economic damage value are developed, consideration should be made to the lack of use and access of tangible personal property during and subsequent to the lifting of restrictions for businesses including, but not limited to hotels, airlines, and restaurants reducing capacity.

4. Limit millage rates and other tax and fee increases

Virtually all governments, including Florida's local governments, will experience lost revenue due to COVID-19. Many will wish to raise property taxes or other taxes and fees to recoup that revenue. Elected officials must always remember that the pandemic is hurting all citizens and businesses and many of their incomes are falling as well. Raising taxes will add to the burden taxpayers are already experiencing and will slow the economic recovery. Local governments are currently developing their proposed millage rates for the 2020 tax year and TRIM notices will be mailed to taxpayers this month (August). Final millage rates will be adopted in September. All local governments should be encouraged to reduce their millage rates to at least the rolled-back rate.[10] For the 2021 tax year, the Legislature should consider requiring local governments to not exceed the rolled-back rate. At a minimum, the current statutory millage limitation[11] (which requires super-majority votes to exceed an adjusted rolled-back rate) should be suspended for a year and a unanimous vote of the governing body should be required to exceed the rolled-back rate (as shown on the TRIM notice, not the majority vote rate calculated under current law). Similarly, local governments should avoid increasing fees such as special assessments and impact fees.

STATE TAX CREDITS, INCENTIVES, AND GRANTS

5. Temporarily expand the Community Contribution Tax Credit to include donations for COVID-19 relief

This program provides a tax credit of up to 50% of donations to approved community development projects against corporate income, insurance premium, or sales taxes. The credit is limited to $200,000 per year for an individual taxpayer and $14.0 million in total credits annually, with $10.5 million dedicated to affordable housing for low-income households or those with special needs.[12] The program should be temporarily expanded to include donations made to a relief organization related to COVID-19.

6. Expand the Rural and Urban Jobs Tax Credit programs to include restaurants, bars and retail businesses in both programs and incentivize job retention

The Rural Job Tax Credit and Urban Job Tax Credit programs[13] offer an incentive for eligible businesses located within one of 36 designated Qualified Rural Areas or one of 13 urban areas to create new jobs. Only certain industries qualify. Retail businesses are excluded from the rural credit and eating and drinking establishments are excluded from the urban credit. These are some of the business most hurt by the pandemic. The rural credit ranges from $1,000 to $1,500 per job and the

10 The rate that would generate the same amount of property tax revenues as approved for the prior year, less allowances for new construction, additions, deletions, annexations, etc.

11 Section 200.065(5), Florida Statute. See Florida Department of Revenue, Maximum Millage Levy Calculation History and General Information. https://floridarevenue.com/property/Pages/TRIM_MaximumMillage.aspx

12 Sections 220.183, 212.08(5)(p), and 624.5015, Florida Statutes.

13 Florida Department of Economic Opportunity, Rural and Urban Job Tax Credit Programs. https://floridajobs.org/business-growth-and-partnerships/for-businesses-and-entrepreneurs/business-resource/rural-and-urban-job-tax-credit-programs

urban credit ranges from $500 to $2,000 per job and can be taken against either the corporate income tax or the sales tax. Both programs are capped at $5 million in total tax credits annually. The program should be expanded in the following ways:

- The annual caps should be increased to $15,000 for both programs;
- Retail businesses, including restaurant and bars, should be eligible in both programs; and
- Incentivize job retention by providing a credit for jobs retained through the pandemic.

The changes could be temporary, until employment in Florida has recovered.

7. Establish a Ready for Business Grant Program

Similar to the program established in Arkansas,[14] Florida should create a program to provide direct grants to businesses for past and future expenses associated with ensuring the health and safety of employees and patrons in response to the pandemic. Eligible expenses would include Personal Protective Equipment (PPE) and no-contact thermometers for employees and customers; no-contact Point of Sale (POS) payment equipment; cleaning supplies and disinfectants; hand sanitizer stations; and expenses associated with reconfiguring business to meet recommended health and safety guidelines, signage, and marketing. The program could utilize Federal funds made available to states through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).[15]

SALES TAXES

8. Provide sales tax relief for business rent taxes paid by business not able to operate due to COVID-19

For those businesses that have not been able to operate, or only partially operate, due to COVID-19, a credit for sales tax paid on renting their business premises should be made available, along with the abatement of future sales tax payments until such time that the businesses can fully reopen.

9. Enact a temporary sales tax exemption for COVID-19-related purchases and cleaning services

Provide businesses and individuals with a temporary sales tax exemption on purchases of materials, equipment or cleaning services related to creating COVID-19 safe working environments or CDC-related protections (e.g., personal protective equipment, disinfectants, plexiglass barriers, temperature scanners, etc.). The new temporary exemption should be retroactive to March 1, 2020, the date of the Florida Surgeon General's declaration of a public health emergency in Florida.[16]

10. Clarify exemption for environmental cleaning services for health care facilities

Although Florida generally does not levy the sales tax on services, a few, such as nonresidential cleaning services, are taxed. Relying on NAICS code 561720 (janitorial services) to define nonresidential cleaning services as a taxable service has resulted in inconsistencies and unintended consequences in the application of the tax. Section 212.08(7)(v), F.S. provides the exemption for professional services. The Legislature should clarify that environmental cleaning services provided by specially trained firms subject to standards set by the Centers for Disease Control (CDC) and other federal and state health agencies for cleaning, disinfecting, and removing pathogens in patient treatment areas of health care facilities are exempt from tax by this section and not subject to tax as janitorial services (Section 212.05(1)(i)(1)(b), F.S.). This would be a restatement of existing law and would be permanently and retroactively applied.

14 Arkansas Department of Commerce, 'Arkansas Ready For Business': Arkansas Department of Commerce Announces Grant Program, May 4, 2020.

15 United States Congress, Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Public Law No: 116-136. https://www.congress.gov/bill/116th-congress/house-bill/748

16 Office of the Governor, Executive Order number 20-51, Establishes COVID-19 Response Protocol and Directs Public Health Emergency, March 1, 2020. https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf

CORPORATE INCOME TAXES

11. Adopt CARES Act provisions designed to protect and assist businesses during the pandemic

The federal CARES Act[17] included several Corporate Income Tax (CIT) provisions to help business recover from COVID-19. Florida's 2021 piggy-back legislation[18] should adopt the following provisions:

- Allow taxpayers to carry back losses incurred during 2018-2020 for five years, including allowing businesses to request a tentative ("quick") refund, rather than requiring an amended return.
- If not decoupling from the interest deduction limitation in the federal Tax Cuts and Jobs Act (TCJA) (see recommendation 22), adopt the CARES Act provision that increases the limitation on interest deductions from 30 percent to 50 percent.
- Allow hotels, restaurants and retail businesses to take 100 percent bonus depreciation on Qualified Improvement Property (QIP), including refunds for 2018 and 2019 QIP expenses.

12. Waive penalties for late returns for corporate income taxpayers that missed the state deadline to request an extension

Florida corporate income tax returns are due by the first day of the fifth month of the taxpayer's fiscal year. In April, DOR extended the deadline to file for taxpayers with due dates of May 1, June 1, and July 1 to August 3. The deadline to file for an extension was extended from May 1 to June 1 and the June 1 and July 1 extension deadlines remained the same. Perhaps due to the federal extension until July 15, many Florida taxpayers with "zero" returns (no tax owed) missed the extension deadline for their state return and will be late if not filed by August 3. DOR should waive the penalty for any return for which an extension that was timely requested for federal purposes (July 15) and filed with the state by the extended state due date of November 2.

REEMPLOYMENT ASSISTANCE TAX

13. Disregard COVID-19-related layoffs in the calculation of employers' experience ratings

Employer's reemployment assistance tax rate can vary due to their experience rating which is based on the employer's own employment records in relation to the employment records of all other employers. The means that employers that layoff more employees, causing increased reemployment assistance benefits, contribute more to the funding of benefits than employers that rarely lay off their employees. Under normal circumstances, this makes sense; however, during this health crisis, safer-at-home orders and mandated business closures have disproportionately impacted some businesses and industries more heavily than others. Not including COVID-19-related layoffs in calculating tax rates can limit increase due to pandemic-related benefits claims beyond employers' control. More than half of states have adopted such provisions.[19]

14. Phase-in or delay any Reemployment Tax increases necessary to replenish the UC Trust Fund

The unemployment caused by the pandemic is going to strain Florida's Reemployment Assistance Tax system. The state's Unemployment Compensation Trust Fund was in good shape before COVID-19

17 United States Congress, H.R. 748, Public Law No: 116-136. https://www.congress.gov/bill/116th-congress/house-bill/748

18 Florida uses federal taxable income as the starting point to calculate Florida corporations' state income tax liability. Each year, the Florida Legislature passes a corporate income tax "piggy-back" bill to adopt the current federal Internal Revenue Code to pick-up any changes made by Congress. The Legislature may decide to not accept (de-couple) or change certain provisions.

19 Tax Foundation, "More Than Half the States Will Protect Businesses from Certain COVID-19-Related Unemployment Insurance Tax Hikes," May 19, 2020.

arrived. In April, the fund had a balance of $4.1 billion[20] and ranked 2nd among all states in the number of weeks it could fund (90).[21] But unemployment claims are running at a record level--the state has paid out $13.8 billion in benefits, including $2.9 billion in state revenue. Eventually, the fund is likely to need replenishing. When that happens, the priority should be ensuring that businesses are healthy enough to rehire workers, not immediately restoring the fund with increased reemployment assistance taxes. Florida should utilize CARES Act funding to help pay for increased costs and take steps to gradually phase-in any necessary tax increases to help employers to recover, such as what the state did after the Great Recession, including taking federal UC (Title XII) advances and suspending rate increase triggers.

DOCUMENTARY STAMP TAXES

15. Suspend Documentary Stamp Taxes on government-issued pandemic relief loans

Governor DeSantis issued an Executive Order in April suspending documentary stamp taxation on the CARES Act's Paycheck Protection Loans.[22] This should also be done for any future federal or state government pandemic relief loans, or any disaster relief loans, in order to not add additional costs to business recovery and response efforts and to remove a potential disincentive to small business participation in such programs.

TAX ADMINISTRATION

16. Create a deadline to complete the "final" review stage of a refund claim

Many cash-strapped Florida businesses have valid refund claims that have been reviewed by auditors at the Florida Department of Revenue (DOR) but have not yet been issued because they are still pending "final review." The final review step happens after an auditor and auditor's supervisor have carefully reviewed and approved the refund, but before a refund check is issued. While this is a critical stage in the process, it should not take several months before the final review stage is complete. DOR does have to begin paying income 90 days after a refund application is complete but it should work to issue refund checks as soon as possible, perhaps setting a temporary deadline of 30 days. This will eliminate unnecessary delays in paying valid refunds to taxpayers, especially at a time when receipt of those refunds is critical to maintaining their ongoing operations.

17. Issue refunds for taxpayers that overpaid estimated taxes

Florida requires businesses that paid $200,000 or more in sales taxes during the previous state fiscal year to make estimated sales tax payments. These payments are due on the 20th of each month and are equal to 60 percent of one of the following options: the state tax due for the same month of the previous calendar year; the state tax due for the next month's return; or the monthly average state tax due during the calendar year. Due to the COVID-19-related economic slow-down, many taxpayers overestimated their tax liability and paid estimated tax that was more than the estimated tax for the upcoming month (in some situations the estimated tax for the upcoming month is $0). This created a credit due. However, the Department of Revenue (DOR) will not refund an overpayment of estimated taxes unless the taxpayer closes their sales tax account. DOR should provide taxpayers the options to obtain refunds when estimated sales and use tax remittances exceed liabilities.

20 U.S. Department of the Treasury, Treasury Direct, Florida Account Balance, April 2020. https://www.treasurydirect.gov/govt/reports/tfmp/tfmp_utf.htm

21 Based on 2020 solvency levels and claims as of April 4, 2020. Tax Foundation, States' Unemployment Compensation Trust Funds Could Run Out in Mere Weeks, April 9, 2020.

22 Florida Department of Revenue, Office of the Executive Director, Order of Emergency Waiver/Deviation # 20-52-DOR-003. https://floridarevenue.com/taxes/Pages/taxpayerInfoCovid19.aspx

18. Implement compliance audit procedures associated with COVID-19

Taxpayers have been forced to furlough or lay off non-essential employees, which has undoubtedly caused disruptions in business processes including those in their accounting and tax departments. This must be considered when these periods come under audit; therefore, the state should provide an automatic waiver of interest and penalties on tax assessed in future compliance audits for the months of the public health emergency. Additionally, DOR regularly conducts audits of large taxpayers focusing on a detailed review of transactions occurring in a few "sample" months, then projecting any findings from that review over the taxpayer's full 3-year audit period. If DOR selects sample months occurring during pandemic in future audits, the resulting projections may result in improper audit assessments. Likewise, if non-COVID months are sampled, projecting those results over the decreased sales activity occurring during the COVID months will create unjust results. DOR must take care to avoid such issues when auditing taxpayers in the future.

RECOMMENDATIONS TO HELP THE ECONOMY RECOVER AND PROSPER

These recommendations are not directly related to COVID-19 impacts but can help Florida to recover from the economic damage it wrought. These are long-term tax system improvements that can encourage economic growth and make Florida an even more attractive place for residents and companies to locate. Some of these recommendations are long-time recommendations of Florida TaxWatch and companies and organizations represented on the COVID-19 Taxpayer Task Force.

SALES TAXES

19. Reduce and ultimately eliminate the Business Rent Tax

It would be difficult to find a more clear and widespread competitive disadvantage faced by many Florida businesses than the Business Rent Tax (BRT). Florida is the only state in the nation that applies a statewide sales tax to leases of commercial property. This creates a government-mandated increase of up to 8.0 percent in occupancy costs for all business that rent, a cost they would not incur in any other state.[23] Over the last several sessions, the Legislature has slowly reduced the state tax from 6.0 percent to 5.5 percent.

Additionally, local sales surtax can be as high as 2.5 percent. Usually, these discretionary sales surtaxes are only levied on the first $5,000 of any single taxable item; however, this does not apply to commercial rent payments.

There is considerable bipartisan support for reducing and eventually eliminating the BRT. In addition, the local cap, or an alternative cap, should be extended to the sales tax on rent payments.

20. Enact E-Fairness legislation

The non-collection of sales taxes on sales to Florida customers by remote (out-of-state) sellers has been the most significant tax compliance and collection issue facing Florida and other states for many years. Remote vendors sell products by the internet, telephone, and mail. Not collecting sales taxes on remote sales not only costs Florida governments hundreds of millions in legally owed revenue, it also

23 Florida TaxWatch, "Now is the Time to Eliminate the Business Rent Tax," April 2017.

puts Florida retailers at a competitive disadvantage, distorts purchasing decisions, is unfair to Floridians who do pay the tax, and makes millions of Floridians (often unwittingly) lawbreakers.[24]

After being viewed as unconstitutional for many years, in June 2018 the U.S. Supreme Court (*South Dakota v. Wayfair,Inc.*) ruled that states can apply reasonable requirements for remote vendors to collect sales and use taxes on sales to residents even if the vendor does not have a physical presence in the state. Florida is one of only two states (out of the 45 that levy a sales tax) that has not taken steps to implement E-Fairness in the wake of the U.S. Supreme Court decision.[25]

Florida should enact legislation similar to bills filed last session (SB 126 and HB 159 in 2020) to require marketplace providers and out-of-state retailers with no physical presence in Florida to collect state and local sales tax on taxable items delivered to purchasers in Florida if the seller makes a substantial number of sales into the state.

In addition to giving Florida retailers a boost, it can increase revenue collections that could help provide the tax relief recommended in this report. It is important to understand that this is not a tax increase; it is a currently legally owed tax that some pay while many others do not. The Florida Revenue Estimating Conference estimates that not collecting taxes on remote sales is costing Florida state and local governments $612 million annually in legally owed revenue and that impact will grow to $870 million annually in five years.[26] The virus has led to increased on-line sales and new converts may stick with remote shopping even after the pandemic. These revenue estimates may be considerably understated.

CORPORATE INCOME TAXES

21. Repeal the currently scheduled Corporate Income Tax rate increase

In response to the tax base-expansion measures included in the federal Tax Cuts and Jobs Act of 2017, the Florida Legislature adopted a refund and rate reduction mechanism in an attempt to avoid a significant state CIT increase for Florida corporations and to keep the federal changes as revenue neutral as possible. As a result, refunds of $543 million were issued this year and the rate was reduced from 5.5 percent to 4.458 percent. The tax rate is scheduled to return to 5.5 percent for tax years beginning on or after January 1, 2022. This tax increase would be a blow to companies trying to recover from the impacts of the COVID-19 pandemic.

22. Decouple from the federal interest deduction limitation

The Florida Legislature adopted most of the provisions in the federal Tax Cuts and Jobs Act of 2017 (with the exception of the treatment of global intangible low-tax income (GILTI). One of these provisions was a limitation on the amount of interest expense (IRC Section 163-j) a taxpayer can deduct—generally no more than 30 percent of adjusted taxable income. Decoupling from this federal provision would lower Florida employers' cost of borrowing for expenses relating to COVID-19 response and recovery and provide an incentive to invest in facilities and jobs.

24 Florida TaxWatch, Top Issues - E-Fairness: Formulating a Florida Response. https://floridataxwatch.org/Top-Issues/E-Fairness

25 Florida TaxWatch, Wayfair: Formulating a Florida Response, April 2, 2019. https://floridataxwatch.org/Top-Issues/E-Fairness/ArtMID/35708/ArticleID/18703/Wayfair-Formulating-A-Florida-Response

26 Florida Revenue Estimating Conference, results from Impact Conference, page 159-176, December 20, 2019. http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact1220.pdf

23. Decouple from federal changes in tax treatment of section 1031 exchanges

When a taxpayer sells an asset, the taxpayer is generally required to include any gain as income. Section 1031 of the Internal Revenue Code created an exception when business property is exchanged for similar property, such as car leasing and rental companies that regularly update their fleet. Any gain from these "like-kind" or "1031" exchanges is not recognized as income.

The TCJA limited this Section 1031 treatment to the exchange of real property. This change in the tax treatment of business tangible personal property is mitigated at the federal level by the bonus depreciation provision of TCJA, which allows a deduction of 100 percent of the cost of business assets in the first year. However, Florida requires companies to spread bonus depreciation over seven years, which can keep the assets on a company's books even after they are sold. Since Florida chose not to adopt bonus depreciation, any Florida company with significant 1031 exchanges experienced very large state tax increases. Tax liability increases of up to tenfold were reported.

Legislation to help with this issue was considered last session, but it would have provided only limited relief. The state should decouple from the federal section 1031 changes in the TCJA.

24. Lower the investment threshold to qualify for single sales factor apportionment

Florida uses a three-factor formula (sales, property, payroll) to apportion a corporation's income to Florida, determining the amount of income subject to the state's corporate income tax. The sales factor is double-weighted. In 2011, Florida enacted a law that allows corporations to elect to use single sales factor (SSF) apportionment if it has $250 million in qualified capital expenditures.[27] Under SSF, the percentage of a company's income that is subject to taxation in Florida is equal to the percentage of the company's sales in Florida. Due to Florida's high investment requirement, SSF is seldom used. Many states are moving to SSF because it does not penalize companies for investing in capital and jobs in that state. Florida should lower the amount of qualified capital expenditures required to qualify to use single sales factor apportionment from $250 million to $100 million in order to encourage capital formation and make Florida an even more attractive state to move to or expand within.

TAX CREDITS AND INCENTIVES

25. Reestablish the Qualified Target Industry (QTI) Tax Refund Program

Florida's Qualified Targeted Industry (QTI) Tax Refund Program was created in 1994 to encourage the creation and retention of high-quality, high-wage jobs. The program creates a state grant equal to the amount paid for certain state and local taxes to eligible businesses creating jobs in certain target industries.[28] It sunset on June 30, 2020 after legislation to make it permanent failed to pass during the 2020 session. The provision was in two bills being debated on the last day of session and after it was amended out of the tax bill. Another bill passed the Senate unanimously but died in messages in the House. Every three years, the state evaluates the return on investment (ROI) of the Florida's economic development programs. The last three reviews have shown QTI has a positive ROI between 4.3:1 and 6.4:1. Florida should reestablish QTI and make it permanent or provide for a ten-year sunset review.[29]

27 Section 220.1105, Florida Statutes.

28 Section 220.153, Florida Statutes.

29 Office of Economic and Demographic Research, Economic Evaluation for Select State Economic Development Incentive Programs, January 2020.

26. Increase the annual cap on total tax credits for research and development (R&D)

Florida has a corporate income tax credit that is equal to 10 percent of the difference between the current tax year's R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. The maximum amount of R&D credits that may be approved by the Department of Revenue during any calendar year is $9 million, but one-year increases in the cap were enacted for 2016 and 2018. The credit is currently only available to certain qualified target industries.[30] Florida should increase the annual cap on the R&D tax credit from $9 million to $50 million and expand the types of business that can qualify, similar to legislation proposed last year (SB 576 in 2020).

27. Create a tax credit to encourage manufacturers to use Florida suppliers

Having a sustainable, resilient supplier base is vital for the state's economy. During the global health pandemic, in-state supplier capabilities and sourcing are critical to Florida's response for personal protection equipment, ventilator parts, and other necessary items; however, deficiencies in the state's supply chain is a real problem for Florida's manufacturing sector, particularly in industries that are experiencing rapid growth, such as commercial space flight. A tax credit should be created for manufacturers that use Florida suppliers versus sourcing outside the state. The credit could be taken against corporate income taxes or as a sales tax refund and based on a percentage of purchases from Florida suppliers or the annual growth in such purchases.

28. Create a Film, Television, and Digital Media Targeted Rebate Program

The U.S. motion picture and television industry is a major private sector employer, supporting 2.1 million jobs and $139 billion in total wages in 2016. These are high-quality, high-paying jobs, with an average salary ($90,000) that is 68% higher than the average salary nationwide. There are more than 354,000 additional jobs in related businesses that distribute motion pictures and television shows to consumers.[31] A program similar to one proposed last session (SB 53) would encourage economic development by offering rebates to certified film, television, and digital media projects that, among other requirements, employ Florida residents and spend at least 70 percent of their production days in Florida. Instead of the first-come, first-served approach of past programs, each potential project's benefits would be evaluated and prioritized. Rebates would only be awarded to a project after all spending has been made and verified.

COMMUNICATIONS SERVICES TAXES

29. Reduce Communications Services Taxes

Florida's Communications Services Tax (CST) is very high relative to both other states and the sales tax on the purchase of other goods. Florida's CST tax rate is the ninth highest in the nation and including varying local levies, it can exceed 15 percent. This makes the tax punitive and distortionary, and makes the state less competitive than other states, including the potential for reducing investment in broadband network infrastructure.[32] This becomes even more important post-COVID-19, as more Floridians work, go to school, and conduct business from home.

30 The Florida Senate Committee on Commerce and Tourism Bill Analysis And Fiscal Impact Statement for SB 576, November 12, 2019.

31 Florida TaxWatch, Is the Sun Setting on Film in Florida?, November 29, 2018. https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/18645/Is-the-Sun-Setting-on-Film-in-Florida

32 Florida TaxWatch, Reducing the Communications Services Tax Would Provide Relief to Virtually All Florida Families and Businesses; Florida's High Tax Rate is Punitive, Distortionary, and Non-Competitive, March 25, 2019.

Conclusion

The global pandemic brought on by COVID-19 has devastated Florida families with its impacts on health and the loss of loved ones. The economic devastation brought on by trying to control the virus will likely last for a considerable length of time.

Forced and voluntary closures of businesses, stay-at-home orders, the virtual short-term elimination of tourism, and the costs of protecting employees and the public have put more than a million Floridians out of work, put employers out of business, and continue to threaten the future existence of the vast majority of businesses that have thus far survived the coronavirus.

Florida's governments have taken an economic hit as well, with increased spending and decreased revenues. Some may try to raise taxes and fees, and there will be resistance to recommendations that further impact revenues. Florida has thus far avoided a state budget deficit and billions in federal aid have helped keep us solvent, but there are tough budget times ahead. Two previous Florida TaxWatch recommendations—E-Fairness and a new gaming compact with the Seminole Tribe—would provide significant recurring funds to both offset falling revenues and implement the measures contained in this report.

It must be remembered that as long as the economy suffers, so too will government tax collections. In addition to battling the virus on the health front, Florida state and local governments must do as much as possible to help business and their employees.

The Florida TaxWatch COVID-19 Tax Task Force offers these recommendations and urges the Legislature, the Governor, the Cabinet and the Department of Revenue to act to ease the tax burdens that have resulted from the pandemic and help with the recovery and long-term growth of Florida's economy. Florida's future depends on it.

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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RESEARCH PROJECT TEAM

Robert E. Weissert	Executive Vice President & General Counsel	
Kurt Wenner	VP of Research	*Principal Author*
Chris Barry	Dir. of Communications & External Affairs	*Design, Layout, Publication*

All Florida TaxWatch research done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.

The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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Florida TaxWatch
106 N. Bronough St.
Tallahassee, FL 32301

o: 850.222.5052
f: 850.222.7476