

Notice of Emergency Rule

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE NO.: RULE TITLE:

12CER14-06 Adjustments for Excess Section 179 Expense and Special Bonus

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY OR WELFARE: Chapter 2013-46, Laws of Florida (L.O.F.), authorizes the Department of Revenue to promulgate an emergency rule, and to renew such rule, to implement the provisions of the law. The law provides that conditions necessary for an emergency rule and its renewal have been met. Chapter 2013-46, L.O.F., retroactively makes changes related to bonus depreciation and Section 179 expense of the Internal Revenue Code (IRC). As a result of these changes, contained in Section 220.13(1)(e), F.S., taxpayers may need to file amended returns. This emergency rule establishes procedures for reporting the additions and claiming the subtractions required by Section 220.13(1)(e), F.S., and provides procedures for filing amended Florida corporate income tax return(s).

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE

CIRCUMSTANCES: The Legislature expressly authorized the promulgation of an emergency rule, and the renewal of such rule, to implement Chapter 2013-46, L.O.F., and determined that all conditions necessary for this emergency rule have been met. The law is retroactive, and as a result, some taxpayers may need to amend their Florida corporate income tax return(s) if a return(s) affected by these changes was previously filed. This emergency rule establishes procedures for reporting additions and claiming the subtractions required by Section 220.13(1)(e), F.S., so that taxpayers may timely file the required amended returns.

SUMMARY: Emergency Rule 12CER14-06, F.A.C. (Adjustments for Excess Section 179 Expense and Special Bonus Depreciation), provides procedures for taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for IRC Section 179 expense in excess of \$128,000 (for tax years beginning in 2013) and bonus depreciation under IRC Sections 167 and 168(k), for assets purchased in 2013. This emergency rule: (1) provides the additions that taxpayers are required to add back to the amount of the federal deduction claimed under IRC Sections 167 and 168(k) for bonus depreciation (for assets placed in service in 2013) and under IRC Section 179 that exceeds \$128,000 (for tax years beginning in 2013); (2) provides the subtractions that are available in each of seven tax years beginning with the year an addition is made under Section 220.13(1)(e), F.S.; (3) requires taxpayers to maintain a schedule reflecting all adjustments made under Section 220.13(1)(e), F.S.; (4) provides that these adjustments do not affect the basis of the property; and (5) provides when the subtractions under Section 220.13(1)(e), F.S., are allowed.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Affan Qureshi, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7602.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12CER14-6 Adjustments for Excess Section 179 Expense and Special Bonus Depreciation.

(1) Scope. This rule only applies to taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for Section 179 of the Internal Revenue Code (“IRC”) expense in excess of \$128,000 (for tax years beginning in 2013) and bonus depreciation under IRC Sections 167 and 168(k) for assets placed in service in 2013.

(2) Additions Required:

(a) For tax years that begin in 2013, taxpayers are required to add back the amount of the federal deduction claimed under IRC Section 179 that exceeds \$128,000. All amounts in excess of \$128,000 are required to be added back, including amounts carried over from previous tax years under IRC Section 179(b)(3)(B). The increased overall investment limitation contained in IRC Section 179(b)(2) is the same for Florida as it is for federal income tax purposes.

(b) Taxpayers are required to add back the amount of the federal deduction claimed as bonus depreciation under IRC Sections 167 and 168(k) for assets placed in service after December 31, 2012, and before January 1, 2014.

(3) Subtractions Allowed:

(a) In each of the seven tax years commencing with the year the addition is made under Section 220.13(1)(e), F.S., taxpayers may subtract one-seventh of the amount of excess IRC Section 179 expense and one-seventh of the amount of bonus depreciation that is added back under Section 220.13(1)(e), F.S.

(b) The total amount that may be subtracted over the seven-year period should equal, but may not exceed, the amounts of IRC Section 179 expense and bonus depreciation that have been added back to Florida taxable income under Section 220.13(1)(e), F.S.

(c) Subtractions under Section 220.13(1)(e), F.S., may create or increase a net operating loss.

(d) Subtractions may be transferred to the surviving company in a merger or acquisition. Otherwise, if a taxpayer ceases to do business during the seven-year period, it may not accelerate, transfer or otherwise utilize a subtraction.

(4) A schedule reflecting all of the adjustments made under Section 220.13(1)(e), F.S., must be created and maintained. Taxpayers must also report any additions on Schedule I, Additions and/or Adjustments to Federal Taxable Income, of the Florida Corporate Income/Franchise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.) and any subtractions on Schedule II, Subtractions from Federal Taxable Income, of the return for the applicable tax year. Partnerships filing a Florida Partnership Information Return (Form F-1065, incorporated by reference in Rule 12C-1.051, F.A.C.) are required to make the adjustments required by Section 220.13(1)(e), F.S., on Part I of Form F-1065.

(5) Basis of Property: The adjustments required by Section 220.13(1)(e)1. and 2., F.S., (relating to excess IRC Section 179 expense and bonus depreciation), do not affect the basis of the underlying property. The basis of the property for Florida corporate income tax purposes is the same as the basis of the property for federal income tax purposes. If the property is sold or otherwise disposed of, the gain or loss for Florida corporate income tax purposes is the same as the gain or loss for federal income tax purposes and is included in federal taxable income apportioned to Florida. Differences in the apportionment fraction from one year to the next are disregarded. The applicable depreciation conventions, methods, and recovery periods are computed in the same manner as they are computed in determining federal taxable income.

(6) Amended Returns and Section 220.13(1)(e), F.S. Taxpayers that filed their Florida corporate income tax return(s) in a manner inconsistent with these changes in law are required to amend their Florida corporate income tax return(s) to conform to the new law. To the extent that

any tax is due and paid on an amended return(s) as a result of these changes in law for the differences between the additions and subtractions required by Section 220.13(1)(e), F.S., and the adjustments required by Section 220.13(1)(e), F.S., reasonable cause exists under Rule 12-13.007, F.A.C., for a waiver of the resulting penalty. The provisions of this rule do not relieve a taxpayer of its obligation to file a Florida corporate income tax return and report the adjustments required by Section 220.13(1)(e), F.S.

(7) The subtractions allowed by Section 220.13(1)(e), F.S., are the means by which the additions required by Section 220.13(1)(e), F.S., are reconciled and recovered. If a taxpayer does not claim a deduction for bonus depreciation (for assets placed in service in 2013) or a deduction for IRC Section 179 expense in excess of \$128,000 (for tax years beginning in 2013), no add-back is required or subtraction allowed for Florida corporate income tax purposes. Similarly, if a taxpayer did not add back bonus depreciation or excess IRC Section 179 expense because, for example, it was not subject to the Florida corporate income tax in that year, no subtraction is allowed for Florida corporate income tax purposes.

(8) No subtraction is allowed for bonus depreciation or IRC Section 179 expense unless it has been added back in computing Florida taxable income under Section 220.13(1)(e), F.S. Rulemaking Authority: s. 3, Ch. 2011-229, L.O.F. Law Implemented Ch. 2011-229, L.O.F. History—New 8-13-14.

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

EFFECTIVE DATE: August 13, 2014