

THE PERSON TO BE CONTACTED REGARDING THESE CHANGES IS: Kaye Howerton, Executive Director, Board of Speech Language Pathology, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

## Section IV Emergency Rules

### DEPARTMENT OF REVENUE

#### Corporate, Estate and Intangible Tax

RULE NO.:	RULE TITLE:
12CER09-01	Adjustments for Section 179 Expense and Special 50% Bonus Depreciation

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** Chapter 2009-18, Laws of Florida, authorizes the Department of Revenue to promulgate an emergency rule, and to renew such rule, to implement the provisions of this law. The law provides that conditions necessary for an emergency rule and its renewal have been met. The additions for bonus depreciation and Internal Revenue Code section 179 expense contained in Sections 220.13(1)(a)14., and 15., F.S., are retroactively repealed as of January 1, 2008. Taxpayers are required to file amended Florida corporate income tax returns to report any differences in taxable income as a result of this law change. 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 returns for the 2007 and 2008 tax years.

**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 2009-18, Laws of Florida, and determined that all conditions necessary for this emergency rule have been met. The law requires taxpayers to amend their Florida corporate income tax returns for the 2007 and 2008 tax years. 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 12CER09-01, (Adjustments for Section 179 Expense and Special 50% Bonus Depreciation), provides procedures for taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for I.R.C. section 179 expense in excess of \$128,000 and special 50% bonus depreciation under I.R.C. section 168(k). This emergency rule: (1) provides the additions that taxpayers are required to add back to the amount of the federal deduction claimed under I.R.C. section 179 that exceeds \$128,000; (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; (5) requires taxpayers who filed their Florida corporate income tax returns and reported additions to tax for bonus depreciation as provided in Emergency Rule 12CER08-31, to amend their Florida tax return; (6) provides that penalty and interest will be compromised or waived when the differences between additions and subtractions result in additional tax due when an amended Florida corporate income tax return is filed; (7) provides when the subtractions under Section 220.13(1)(e), F.S., are not to be included in a taxpayer's Florida corporate income tax return; and (8) provides when the deductions allowed under I.R.C. section 179 and for special 50% bonus depreciation are not required to be included in a taxpayer's Florida corporate income tax return.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Gary Moreland, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4831

THE FULL TEXT OF THE EMERGENCY RULE IS:

12CER09-01 Adjustments for Section 179 Expense and Special 50% Bonus Depreciation.

(1) Scope. This rule only applies to taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for I.R.C. section 179 expense in excess of \$128,000 and special 50% bonus depreciation under I.R.C. section 168(k).

(2) Additions Required:

(a) For tax years that begin in 2008, taxpayers are required to add back the amount of the federal deduction claimed under section 179 of the Internal Revenue Code ("I.R.C."), which 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 I.R.C. section 179(b)(3)(B). The increased overall investment limitation contained in I.R.C. 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 special 50% bonus depreciation under I.R.C. section 168(k) for assets placed in service between December 31, 2007 and January 1, 2009.

(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 I.R.C. section 179 expense and one-seventh of the amount of special 50% 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 I.R.C. section 179 expense and special 50% bonus depreciation that have been added back to Florida taxable income under Section 220.13(1)(e), F.S.

(c) 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 and Emergency Excise 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 Florida corporate income tax return (F-1120) for the current 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 Sections 220.13(1)(e)1. and 2., F.S., (relating to excess I.R.C. section 179 expense and special 50% 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) Example: On its calendar-year 2008 federal income tax return, the Taxpayer claimed \$250,000 in I.R.C. section 179 expense, of which \$25,000 was a carryover from 2006 allowed under I.R.C. section 179(b)(3)(B). The Taxpayer also claimed \$300,000 in special 50% bonus depreciation under I.R.C. section 168(k), and \$50,000 of regular depreciation under I.R.C. section 168(b) for assets placed in service during the 2008 calendar year. The Taxpayer is required to add back \$122,000 (\$250,000 minus \$128,000) of section 179 expense and \$300,000 of special 50% bonus depreciation in computing its Florida taxable income. The Taxpayer is not required to add back the amount of regular depreciation it claimed under I.R.C. section 168(b) on its 2008 federal income tax return. On its 2008 Florida corporate income tax return, the taxpayer may also claim subtractions for one-seventh of the amount of bonus

depreciation required to be added back (\$300,000 divided by seven equals \$42,857.14) and one-seventh of the amount of section 179 expense required to be added back (\$122,000 divided by seven equals \$17,428.57). In each of the subsequent six tax years, the Taxpayer may subtract \$42,857.14 and \$17,428.57. At the end of these years, the subtractions should equal the amount(s) required to be added back. If the Taxpayer disposes of the property, the gain or loss is the same for Florida as it is for federal income tax purposes. Any differences resulting from additions to Florida income are recovered solely through the subtraction process even though the underlying property may be disposed of or fully depreciated.

(7) Amended Returns and Sections 220.13(1)(a)14., and 15., F.S. The original law (Chapter 2009-18, Laws of Florida) which created Section 220.13(1)(e), F.S., repealed Sections 220.13(1)(a)14., and 15., F.S., and made these changes retroactive to January 1, 2008. Taxpayers that filed their Florida corporate income tax returns and reported additions to tax for special 50% bonus depreciation and section 179 expense under Sections 220.13(1)(a)14., and 15., F.S., or pursuant to Emergency Rule 12CER08-31, 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 a 2007 or 2008 amended return(s) as a result of the differences between the additions and subtractions required by Sections 220.13(1)(a)14., and 15., F.S., and the adjustments required by Section 220.13(1)(e), F.S., additional interest or penalty will be compromised or waived. 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.

(8) 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 special 50% bonus depreciation or a deduction for I.R.C. section 179 expense in excess of \$128,000 on the related federal income tax return(s), no addback is required or subtraction allowed for Florida corporate income tax purposes. Similarly, if a taxpayer did not add back special 50% bonus depreciation or excess 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.

(9) Bonus depreciation claimed for assets placed in service prior to January 1, 2008 is not required to be added back under Section 220.13(1)(e), F.S. I.R.C. section 179 expense claimed in tax years beginning before January 1, 2008, is not required to be added back. No subtraction is allowed for special 50% bonus depreciation or I.R.C. 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. 4, Ch. 2009-18, L.O.F. Law Implemented Ch. 2009-18, L.O.F. History—New 6-24-09.

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

EFFECTIVE DATE: June 24, 2009

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**Section V**

**Petitions and Dispositions Regarding Rule Variance or Waiver**

**DEPARTMENT OF LAW ENFORCEMENT**

NOTICE IS HEREBY GIVEN THAT on June 22, 2009, the Criminal Justice Standards and Training Commission, received a petition for temporary waiver of paragraphs 11B-18.0071(5)(a), (b), F.A.C., from Director Ron Grimming and the Miami Dade College School of Justice. Pursuant to Section 120.542, F.S., Petitioner requests a waiver of paragraphs 11B-18.0071(5)(a), (b), Florida Administrative Code. The Petitioner wishes to temporarily waive that portion of the rule requiring training schools to submit semi-annual forms to the Commission staff detailing how interest earned on Officer Training Money interest-bearing accounts was expended; and, requiring training schools to then submit a year-end report detailing and reconciling all such interest expenditures for the year. Petitioner wishes to waive this portion of the rule requirement for fiscal year 2006/2007 in order to avoid the economic hardship of having to repay the interest moneys accrued and expended during that time which were not reported as required by rule. Petitioner asserts that repaying the interest accrued during the 2006/2007 fiscal year would cause substantial economic hardship to the Region XIV training schools. Petitioner asserts that the underlying statute is satisfied because the interest accrued was expended as required by rule and statute, however it was only the forms required to report that activity that were not filed because of exigent circumstances existing only for fiscal year 2006/2007.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, (850)410-7676.

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**WATER MANAGEMENT DISTRICTS**

NOTICE IS HEREBY GIVEN THAT on June 22, 2009, the South Florida Water Management District (District), received a petition for waiver from North Springs Improvement District, Application Number 09-0108-4, for utilization of Works or Lands of the District known as L-36 in Broward County, for the proposed installation of a 48" steel outfall pipe within the District rights of way, Section 18, Township 48 South, Range 40 East. The petition seeks relief from subsections 40E-6.011(4) and (6), Florida Administrative Code, which governs crown elevation for culvert pipe connections within the Works or Lands of the District.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Juli Triola Russell at (561)682-6268 or email: [jtriola@sfwmd.gov](mailto:jtriola@sfwmd.gov). The District will accept comments concerning the petition for 14 days from the date of publication of this notice.

To be considered, comments must be received by end of business on the 14th day at: South Florida Water Management District, 3301 Gun Club Road, MSC 1411, West Palm Beach, FL 33406, Attn.: Juli Triola Russell, Office of Counsel.

NOTICE IS HEREBY GIVEN THAT on June 11, 2009, the South Florida Water Management District (District or SFWMD) has issued an order.

SFWMD Order No.: 2009-165-DAO-ROW was issued to the Town of Miami Lakes (Application No.: 09-0316-7). The petition for waiver was received by the SFWMD on March 16, 2009. Notice of receipt of the petition requesting the waiver was published in the Florida Administrative Weekly, Vol. 35, No. 14, on April 10, 2009. No public comment was received. This Order provides a waiver of the District's criteria for the proposed installation of a chain link fence within the north right of way of the C-8 Canal; Section 14, Township 52 South, Range 40 East, Miami-Dade County. Specifically, the Order grants a waiver from subsections 40E-6.011(4) and (6), Florida Administrative Code, and the Basis of Review for Use or Occupancy of the Works or Lands of the District, incorporated by reference in subsection 40E-6.091(1), Florida Administrative Code, which governs the placement of