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# **Federal Affairs Subcommittee**

# **MEETING PACKET**

**Wednesday, January 11, 2012**  
**212 Knott Building/Webster Hall**  
**9:00 AM – 10:30 PM**

**Dean Cannon**  
**Speaker**

**Clay Ford**  
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Federal Affairs Subcommittee

**Start Date and Time:** Wednesday, January 11, 2012 09:00 am

**End Date and Time:** Wednesday, January 11, 2012 10:30 am

**Location:** Webster Hall (212 Knott)

**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HM 83 Congressional Term Limits by Caldwell

HM 717 Federal Corporate Tax Rate by Burgin

**NOTICE FINALIZED on 01/09/2012 16:12 by Sims-Davis.Linda**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 83 Congressional Term Limits

SPONSOR(S): Caldwell and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett	Camechis
2) State Affairs Committee			

SUMMARY ANALYSIS

This memorial asks Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms a member of Congress may serve in the same office. The memorial does not, however, suggest a specific number of consecutive terms to which a member should be limited.

Membership in the U.S. Congress is governed by the U.S. Constitution, which specifies that members of the House serve two-year terms and members of the Senate serve six-year terms. The Constitution does not limit the number of terms or years a member may serve in the same office.

In 1992, Florida voters amended the State Constitution to prohibit members of the U.S. House and Senate from serving more than eight consecutive years in the same office. In 1995, the U.S. Supreme Court decided that state-imposed term limits on federal legislators violates the U.S. Constitution, and that any term limit for federal legislators must be imposed by amendment to the U.S. Constitution. In 1999, the Florida Supreme Court concluded that the provision in Florida's Constitution limiting terms of federal legislators is "undoubtedly void." Thus, in practice, members of Congress are not subject to a limit on the number of years they may serve, even though this State's Constitution appears to impose a limit.

During the 111<sup>th</sup> Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee. During the current 112<sup>th</sup> Congress, five joint resolutions have been filed proposing similar amendments; none have been heard in committee.

In order to be added to the U.S. Constitution, an amendment proposed by Congress must be approved by two-thirds of the members in Congress, and then ratified by three-fourths of the states. In Florida, a proposed amendment is ratified if a majority of the members present and voting in each house of the Legislature vote in favor of a concurrent resolution approving the amendment.

This memorial does not have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

According to this memorial, “a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls....” Thus, the memorial petitions the U.S. Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that members of the U.S. House and Senate may serve. The memorial does not, however, suggest a specific number of years or terms a member may serve, or suggest a term limit that would permanently ban election to the same office after a member serves a set number of terms or years. Under a consecutive term limit approach that does not impose a permanent ban, a member could be re-elected to the same position as long as there is a break between periods of service

#### *Historical Background*

The U.S. Constitution creates three branches of government: Executive, Legislative, and Judicial. The term limitations, or lack thereof, for offices within each branch are as follows:

- Executive: A person may not hold the office of the presidency for more than two four-year terms.<sup>1</sup>
- Judicial: Supreme Court Justices are not subject to term limits; they may serve until retirement, death, or impeachment.<sup>2</sup>
- Legislative: Members of the U.S. House and Senate are not subject to any term limitations.<sup>3</sup>

The concept of imposing term limits on members of Congress is not a new one. Prior to the ratification of the United States Constitution in 1788, delegates to the Continental Congress were subject to term limits.<sup>4</sup> When it was decided that the Articles of Confederation would be replaced, the Framers of the Constitution debated the issue of imposing congressional term limits, known at the time as “rotation requirements.”<sup>5</sup> Ultimately, consensus was not reached and term limits were omitted from the U.S. Constitution.<sup>6</sup>

The issue remained dormant for some time because, until the 1900s, it was uncommon for members of Congress to serve more than a few terms in office.<sup>7</sup> At each election, new representatives were elected thirty to sixty percent of the time; thus, high political turnover made term limits a non-issue.<sup>8</sup> Attempts to impose term limits resurfaced in 1947 in response to Franklin D. Roosevelt’s election to his fourth term as President.<sup>9</sup>

In 1947, Congress proposed the 22<sup>nd</sup> amendment to the U.S. Constitution to impose a two-term limit on the office of the President.<sup>10</sup> The amendment was ratified by the states in 1951. During the debate on presidential term limits, the first “modern” proposal seeking to impose term limits on members of Congress

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<sup>1</sup> U.S. Const. amend. XXII, § 1.

<sup>2</sup> U.S. Const. art. III, § 1.

<sup>3</sup> The “qualifications clauses” of the U.S. Constitution read as follows: “No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the [U.S.], and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” U.S. Const. art. I, § 2, cl. 2. “No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the [U.S.], and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.” U.S. Const. art. I, § 3, cl. 3.

<sup>4</sup> Under the Articles of Confederation members were limited to three one-year terms over a period of six years. Text for Articles of Confederation found at: [www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript](http://www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript)

<sup>5</sup> See Dwayne A. Vance, *State-Imposed Congressional Term Limits: What Would the Framers of the Constitution Say?* 1994 B.Y.U. L. Rev. 429 (1994) (for example, Hamilton and Madison opposed term limits; Jefferson supported term limits).

<sup>6</sup> *Id.* at 437.

<sup>7</sup> Tiffanie Kovacevich, *Constitutionality of Term Limitations: Can States Limit the Terms of Members of Congress?*, 23 Pac. L.J. 1677, 1680 (1992)

<sup>8</sup> *Id.* at 1681.

<sup>9</sup> *Id.* at 1682.

<sup>10</sup> See U.S. Const. amend. XXII, § 1

was introduced.<sup>11</sup> The proposal received one vote and the issue again remained dormant until the modern term limit movement began in the 1990s.

### ***Modern Congressional Term Limit Movement***

A movement within the states to enact term limits began gaining traction in the early 1990s as voters became dissatisfied with incumbent politicians. While not universally accepted,<sup>12</sup> a total of twenty-three states, including Florida, passed laws that attempted to impose term limits on federal legislators.<sup>13</sup>

In 1992, following the successful "Eight is Enough" campaign to establish eight-year term limits, 76.8% of Floridians voted to amend the State's Constitution to include article VI, section 4(b).<sup>14</sup> The provision provides that no person may appear on the ballot for reelection to the state or federal legislature "if, by the end of the current term of office, the person will have served . . . in that office for eight consecutive years."<sup>15</sup>

Florida's attempt to impose term limits on federal legislators was effectively invalidated, along with the attempts made by twenty-two other states, by the 1995 U.S. Supreme Court decision in *U.S. Term Limits, Inc. v Thornton*.<sup>16</sup> In that case, the Court concluded that state-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's Qualifications Clauses, and that term limits on federal legislators may only be imposed by amendment to the U.S. Constitution.<sup>17</sup> In 1999, the Florida Supreme Court held that Florida's constitutional provision imposing term limits on *state* legislators is valid, while the provision placing term limits on *federal* legislators is "undoubtedly void."<sup>18</sup> Thus, amendments to State Constitutions to limit terms of federal legislators are considered unenforceable, making federal term limits valid only if imposed through amendment to the U.S. Constitution.

In order for a proposed amendment to pass Congress, it must be approved by a two-thirds vote in both chambers (290 votes in the House and 67 votes in the Senate). If approved, the proposed amendment is sent to the states for ratification. If the legislatures or ratifying conventions of at least three-fourths of the states (38 states) approve the proposed amendment, it is ratified and becomes part of the U.S. Constitution.<sup>19</sup> In order for the Florida Legislature to ratify an amendment, a majority of the members present and voting in each house must vote in favor of a concurrent resolution approving the amendment.<sup>20</sup>

Between 1995 and the present day, about 70 joint resolutions have been filed in Congress proposing amendments to the U.S. Constitution to limit terms of federal legislators. It appears that only two were subject to a vote of the full House, one in 1995 and one in 1997, but neither received the two-thirds vote necessary to send the proposed amendments to the states for ratification. It appears that two proposed amendments have been heard by a Senate committee, one in 1995 and one in 1998, but neither was subject to a final vote of the full Senate. Since 1999, none of the proposed amendments filed in Congress have received a committee hearing. (See Appendix A)

During the 111<sup>th</sup> Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee.<sup>21</sup> During the current 112<sup>th</sup> Congress, five joint resolutions proposed similar amendments; none have been heard in committee.<sup>22</sup>

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<sup>11</sup> See Kovacevich, supra n. 4, at 1682 (Introduced by Sen. O'Daniel, bill sought to limit all federal legislators to one six-year term).

<sup>12</sup> See Kovacevich, supra n. 4, at 1685. (For example, the voters of Washington State originally rejected a term limitation proposal which would have restricted the terms of both state legislators and state representatives in Congress.)

<sup>13</sup> U.S. Congressional Research Service. Term Limits for Members of Congress: State Activity (No. 96-152 GOV; Nov. 22, 1996), by Sula P. Richardson. Text at: <http://digital.library.unt.edu/ark:/67531/metacrs582/m1/>; Accessed: September 20, 2011. (States that passed some form of congressional term limits: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.)

<sup>14</sup> Florida Department of State, Division of Elections, November 3, 1992 General Election Results (November 16, 1992).

<sup>15</sup> Fla. Const. art. VI, § 4(b), (1992)

<sup>16</sup> *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 881 (1995).

<sup>17</sup> *Id.*

<sup>18</sup> *Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999)

<sup>19</sup> U.S. Const., art. V.

<sup>20</sup> House Rules 5.10 (a), 10.8, and 13.6.

<sup>21</sup> H.J. RES. 14, H.J. RES. 63, H.J. RES. 67, S.J. RES. 1, S.J. RES. 21

<sup>22</sup> H.J. RES. 20, H.J. RES. 53, H.J. RES. 71, S.J. RES. 1, S.J. RES. 11

B. SECTION DIRECTORY: None.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

**APPENDIX A**

**JOINT RESOLUTIONS FILED IN CONGRESS SINCE 1995 PROPOSING A CONSTITUTIONAL AMENDMENT TO LIMIT TERMS OF SERVICE IN CONGRESS<sup>23</sup>**

<b>Congress</b>	<b>House Joint Resolutions</b>	<b>Senate Joint Resolutions</b>	<b>Total Filed</b>
<b>104<sup>th</sup> 1995-1996</b>	Filed: HJRs 2, 3, 5, 8, 12, 24, 25, 29, 34, 38, 44, 52, 65, 66, 73, 75, 76, 77, 82, 91, 92  Heard in committee: HJRs 2, 3, 5, 8, 73  Voted on by House: HJR 73 was considered on the House floor in 1995 but failed to obtain a 2/3 vote (227-204)	Filed: SJRs 19, 21, 36  Heard in committee: SJR 21 was approved by committee in 1995 but was not submitted to a vote of the full Senate.  Voted on by Senate: None	24 H-21 S-3
<b>105<sup>th</sup> 1997-1998</b>	Filed: HJRs 2, 3, 5, 6, 8, 16, 22, 23, 27, 31, 33, 34, 42, 49  Heard in committee: None  Voted on by House: HJR 2 was considered on the House floor in 1997 but failed to obtain a 2/3 vote (217-211).	Filed: SJRs 16, 52  Heard in committee: SJR 16 was approved by committee in 1998 but was not submitted to a vote of the full Senate.  Voted on by Senate: None	16 H-14 S-2
<b>106<sup>th</sup> 1999-2000</b>	Filed: HJRs 2, 15, 16, 18  None heard in committee	Filed: SJR 45  None heard in committee	5 H-4 S-1
<b>107<sup>th</sup> 2001-2002</b>	Filed: HJRs 57, 58  None heard in committee	None filed	2 H-2 S-0
<b>108<sup>th</sup> 2003-2004</b>	Filed: HJRs 16, 43, 66, 81  None heard in committee	None filed	4 H-4 S-0
<b>109<sup>th</sup> 2005-2006</b>	Filed: HJRs 11, 80  None heard in committee	Filed: SJR 3  None heard in committee	3 H-2 S-1
<b>110<sup>th</sup> 2007-2008</b>	Filed: HJRs 24, 60, 71, 98  None heard in committee	Filed: SJR 2  None heard in committee	5 H-4 S-1
<b>111<sup>th</sup> 2009-2010</b>	Filed: HJRs 14, 63, 67  None heard in committee	Filed: SJRs 1, 21  None heard in committee	5 H-3 S-2
<b>112<sup>th</sup> 2011-2012</b>	Filed: HJRs 20, 53, 71  None heard in committee	Filed: SJRs 1, 11  None heard in committee	5 H-3 S-2
<b>TOTAL RESOLUTIONS FILED: 69 (57 HJRs and 12 SJRs)</b>			
<b>TOTAL HJRs HEARD IN COMMITTEE: 6</b>			
<b>TOTAL VOTED ON BY THE HOUSE: 2 (Neither obtained 2/3 approval)</b>			
<b>TOTAL SJRs HEARD IN COMMITTEE: 2</b>			
<b>TOTAL VOTED ON BY THE SENATE: 0</b>			

<sup>23</sup> The information on this table was compiled on September 28, 2011, by performing searches of the Library of Congress website, [www.thomas.gov](http://www.thomas.gov).



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House Memorial

A memorial to the Congress of the United States,  
 urging Congress to propose to the states an amendment  
 to the Constitution of the United States that would  
 limit the consecutive terms of office which a member  
 of the United States Senate or the United States House  
 of Representatives may serve.

WHEREAS, Article V of the Constitution of the United States  
 authorizes Congress to propose amendments to the Constitution  
 which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been  
 expressed that the best interests of this nation will be served  
 by limiting the terms of members of Congress, a concern  
 expressed by the founding fathers, incorporated into the  
 Articles of Confederation, attempted through legislation adopted  
 by state legislatures, and documented in recent media polls,  
 NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Florida Legislature respectfully petitions the  
 Congress of the United States to propose to the states an  
 amendment to the Constitution of the United States to limit the  
 number of consecutive terms which a person may serve in the  
 United States Senate or the United States House of  
 Representatives.

HM 83


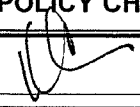
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28           BE IT FURTHER RESOLVED that copies of this memorial be  
29    dispatched to the President of the United States, to the  
30    President of the United States Senate, to the Speaker of the  
31    United States House of Representatives, and to each member of  
32    the Florida delegation to the United States Congress.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 717 Federal Corporate Tax Rate  
**SPONSOR(S):** Burgin  
**TIED BILLS:** IDEN./SIM. **BILLS:** HM 685, SM 1038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett 	Camechis 

**SUMMARY ANALYSIS**

Concern over the corporate tax code has increased as a result of expanding global interdependency. In April 2011, it was reported that President Obama and Congressman Paul Ryan expressed support for federal corporate tax reform. Many policymakers, practitioners, and taxpayers agree that changes to the federal corporate tax code are needed; however, the form, scope, and aim of reform remain the subject of vigorous debate. At least 26 proposals have been introduced in Congress to eliminate, reduce, or otherwise reform the corporate tax code. To date, none of the proposals have passed.

This memorial urges Congress to cut the corporate federal tax rate, but does not suggest what the new tax rate should be.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the U.S. Congress.

The memorial does not have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Effect of Proposed Changes

This memorial urges Congress to cut to federal corporate tax rate, but does not suggest a new tax rate.

#### Current Situation

##### *Background*

The federal Tariff Act of 1909 established that “every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares” pay a “special excise tax with respect to the carrying on of doing business.”<sup>1</sup> Since that time, the federal corporate tax code has been augmented and modified numerous times to create the modern corporate tax code.

A corporation is taxed on its net income from business operations, interest, rent, dividends, royalties, and capital gains (minus the costs of purchased goods, labor, interest, and other expenses).<sup>2</sup> Since the 1980s, the tax has accounted for between 6 and 13 percent of the federal revenue and roughly 1 to 3 percent of the gross domestic product (GDP),<sup>3</sup> making it one of the largest sources of federal revenue.

Concern over the corporate tax code has increased as a result of expanding global interdependency. Tax experts caution that the “U.S. international tax system stands at a crossroads” and that “[i]t is outdated, overly complicated, and increasingly ineffective in supporting the goals of either government or businesses in today’s competitive global marketplace.”<sup>4</sup>

In April 2011, it was reported that President Obama and Congressman Paul Ryan expressed support for corporate tax reform.<sup>5</sup> Although policymakers, practitioners, and taxpayers may agree that changes to the corporate tax code are needed, the form, scope, and aim of reform remain the subject of vigorous debate.

##### *Tax System*

Also at the center of corporate tax reform is the current tax codes’ allocation and collection system. The two most common systems are territorial and worldwide. Under the far more common territorial system, a corporation’s domestically generated income is taxed and income earned abroad is not. Alternatively, six countries operate under the worldwide system where income is taxed regardless of where it was generated.<sup>6</sup> The United States uses a unique hybrid of the two systems, but the approach is more in line with the worldwide system; a corporation must pay taxes on all domestically generated income, while tax on income earned abroad is deferred until it is repatriated to the U.S.<sup>7</sup> The U.S. Treasury Department described the inherent problems of the unique system in 2002:

No country has rules for the immediate taxation of foreign-source income that are comparable to the U.S. rules in terms of breadth and complexity. For example, the U.S. tax system imposes current tax on the income earned by a U.S.-owned foreign

<sup>1</sup> Ajay K. Mehrotra, *The Public Control of Corporate Power: Revisiting the 1909 U.S. Corporate Tax from A Comparative Perspective*, 11 Theoretical Inquiries L. 497, 507 (2010).

<sup>2</sup> “Challenges to Corporate Tax Enforcement and Options to Improve Securities Basis Reporting,” GAO, July 2006, [www.gao.gov/new.items/d06851t.pdf](http://www.gao.gov/new.items/d06851t.pdf)

<sup>3</sup> *Id.* at 6.

<sup>4</sup> Barbara Angus, Tom Neubig, Eric Solomon & Mark Weinberger, “The U.S. International Tax System at a Crossroads,” 127 Tax Notes 45 (Apr. 5, 2010).

<sup>5</sup> Scott Horsley, “Obama, Ryan Agree: Business Tax Codes Need Reform,” NPR, April 16, 2011; <http://www.npr.org/2011/04/16/135464262/left-right-agree-business-tax-codes-just-too-hard>.

<sup>6</sup> Chile, Ireland, Israel, Mexico, Poland, and South Korea; the average statutory corporate tax rate in these countries is 20.7 percent, as opposed to the United States rate of 39.2 percent.

<sup>7</sup> See PERAB, *supra* note 11 at 84.

subsidiary from its shipping operations, while that company's foreign-owned competitors are not subject to tax on their shipping income. Consequently, the U.S.-based company's margin on such operations is reduced by the amount of the tax, putting it at a disadvantage relative to the foreign competitor that does not bear such a tax. The U.S.-based company has less income to reinvest in its business, which can mean less growth and reduced future opportunities for that company.<sup>8</sup>

### Tax Rates

The federal corporate tax rate and various state corporate tax rates are separately imposed by federal and state law on the capital earnings of a corporation.<sup>9</sup> The combined U.S. corporate tax rate of 39.2 percent (35 percent federal rate combined with the average state rate of 4.2 percent) is the second highest statutory rate among the thirty-four countries of the Organization for Economic Cooperation and Development (OECD).<sup>10</sup> In comparison, the average statutory rate of the other OECD member countries was an estimated 25.4 percent.<sup>11</sup>

The effective tax rate (ETR) is the rate corporations actually pay after accounting for all tax deductions and credits, thus the ETR is generally lower (occasionally it is substantially lower) than the statutory rate of 39.2 percent. For example, a 2008 study by the Government Accountability Office took into account various tax credits, deductions and operating losses, and estimated that 42 percent of U.S.-controlled corporations reported no tax liability in 2 or more years between 1998 and 2005.<sup>12</sup> The study also estimated that 25 percent of the U.S.'s large corporations, those with more than \$250 million in assets, paid no federal income taxes in 2005.<sup>13</sup>

The U.S.' ETR is estimated to be between 18.5 to 34.6 percent; the wide margin is due to complex measurement factors, many of which are subjective and susceptible to manipulation.<sup>14</sup> Most studies, however, have estimated the ETR to be between 25 and 30 percent.<sup>15</sup> In August 2010, the President's Economic Recovery Advisory Board stated that, based on a Treasury Department study, the U.S.' ETR was roughly 29 percent.<sup>16</sup> The ETR of OECD countries was 20.6 percent in 2003.<sup>17</sup>

### Recent Federal Executive Branch Activities

In his 2011 State of the Union address, President Obama asked "Democrats and Republicans to simplify the system. Get rid of the loopholes. Level the playing field. And use the savings to lower the corporate tax rate for the first time in 25 years."<sup>18</sup> In September 2011, the President proposed legislation to close a tax loophole for corporate jet depreciation, and stated that the corporate tax rate could be lowered "if we get rid of all these special deals."<sup>19</sup> The administration's tax reform plan was

<sup>8</sup> Office of Tax Policy, United States Department of the Treasury, *Corporate Inversion Transactions: Tax Policy Implications* (Washington, DC: Office of Tax Policy, May 2002).

<sup>9</sup> All states and the District of Columbia currently impose some form of corporate income or franchise tax, except for Nevada, South Dakota, Washington (state) and Wyoming.

<sup>10</sup> The OECD 2011 Tax Database; <http://www.oecd.org/dataoecd/26/56/33717459.xls>; (Japan has the highest rate at 39.5%).

<sup>11</sup> Challenges in Designing Competitive Tax Systems, Tax reform trends in OECD countries. Page 3, Paris, June 30, 2011; [www.oecd.org/dataoecd/9/23/48193734.pdf](http://www.oecd.org/dataoecd/9/23/48193734.pdf).

<sup>12</sup> Comparison of the Reported Tax Liabilities of Foreign- and U.S.-Controlled Corporations, 1998-2005," GAO, July 2008, at 8. [www.gao.gov/new.items/d08957.pdf](http://www.gao.gov/new.items/d08957.pdf)

<sup>13</sup> *Id.* at 7.

<sup>14</sup> See Citizens for Tax Justice and the Institute on Taxation and Economic Policy Release "Corporate Taxpayers and Corporate Tax Dodgers, 2008-2010" November 3, 2010 (Estimated ETR of 18.5%); See also Jack Mintz and Duanjie Chen, *New Estimates of Effective Corporate Tax Rates on Business Investment*, Tax & Budget Bulletin no. 64, February 23, 2011 (estimated ETR of 34.6%).

<sup>15</sup> A report on the 13 latest ETR studies; Tax Foundation Special Report No. 195, "U.S. Corporations Suffer High Effective Tax Rates by International Standards" by Philip Dittmer, September 2011; [www.taxfoundation.org/news/show/27609.html](http://www.taxfoundation.org/news/show/27609.html)

<sup>16</sup> Rate based on new investments in corporate sector. The President's Economic Recovery Advisory Board, "The Report on Tax Reform Options: Simplification, Compliance, and Corporate Taxation," page 66, August 2010. ("PERAB") [http://www.whitehouse.gov/sites/default/files/microsites/PERAB\\_Tax\\_Reform\\_Report.pdf](http://www.whitehouse.gov/sites/default/files/microsites/PERAB_Tax_Reform_Report.pdf)

<sup>17</sup> Congressional Budget Office, "Corporate Income Tax Rates: International Comparisons," November 2005, <http://cbo.gov/ftpdocs/69xx/doc6902/11-28-CorporateTax.pdf>. (Because the rates are compared are calculated with OECD and treasury data which use differing measures, this comparison should only serve as an approximation.)

<sup>18</sup> Barack Obama, *Remarks by the President in State of Union Address* (Washington, DC: GPO, January 25, 2011); <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address>.

<sup>19</sup> The American Jobs Act (S. 1549) (H. Doc. 112-53) and (H.R. 12), Sec. 421; President Barack Obama, *Remarks by the President on Economic Growth and Deficit Reduction*, White House Rose Garden September 19, 2011; [www.whitehouse.gov/the-press-office/2011/09/19/remarks-president-economic-growth-and-deficit-reduction](http://www.whitehouse.gov/the-press-office/2011/09/19/remarks-president-economic-growth-and-deficit-reduction).

expected to be released in summer or early fall of 2011, but had not been released as of January 4, 2012.<sup>20</sup>

### *Recent Congressional Activities*

In the current 112th Congress, at least 26 pieces of legislation dealing with corporate income tax have been proposed between the two houses of Congress. The bills use a wide variety of approaches to reform the corporate tax code, but generally seek to reduce or eliminate the corporate tax rate, simplify the tax system, change the system to the territorial approach, or create or close corporate tax loopholes. As of November 30, 2011, the majority of these proposals remain in committee.<sup>21</sup> Senator John McCain's "Jobs Through Growth Act" proposed a maximum corporate tax rate of 25 percent, but was defeated in the Senate by a vote of 40 to 56 in November 2011.<sup>22</sup>

### *Florida Corporate Income Tax*<sup>23</sup>

Article VII, section 5(b) of the Florida Constitution governs the imposition of a state income tax, and reads as follows:

No tax upon the income of residents and citizens *other than natural persons* shall be levied by the state, or under its authority, *in excess of 5% of net income, as defined by law, or at such greater rate as is authorized by a three-fifths (3/5) vote of the membership of each house of the legislature* or as will provide for the state the maximum amount which may be allowed to be credited against income taxes levied by the United States and other states. There shall be exempt from taxation not less than five thousand dollars (\$5,000) of the excess of net income subject to tax over the maximum amount allowed to be credited against income taxes levied by the United States and other states.

Certain corporations doing business in Florida must pay tax of 5.5 percent on income earned in Florida. Florida "piggybacks" the federal income tax code in its determination of taxable income. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula: 25 percent on property, 25 percent on payroll and 50 percent on sales. The first \$5,000 of net income is exempt. Proceeds from the tax are deposited into the State's general revenue fund.

Due to the above-quoted constitutional constraint on its authority, the Legislature is not permitted to raise the current rate of 5.5 percent without 3/5 approval of the membership of both houses of the Florida Legislature.

All states and the District of Columbia currently impose some form of corporate income or franchise tax, except for Nevada, South Dakota, Washington (state) and Wyoming. Most levying states and the District of Columbia have flat tax rates. These rates range from 4.63 percent to 9.99 percent. Sixteen states use graduated rates. Most of the ranges fall completely between 1.0 and 9.99 percent. Iowa goes up to a 12 percent maximum rate. Ohio, Texas and Michigan have recently made major changes to the structure of their business income taxes.

B. SECTION DIRECTORY: Not applicable.

<sup>20</sup> Brett Ferguson, *Geithner Expects to Release Corporate Tax Reform Proposal by Autumn*, May 26, 2011; [http://www.bnasoftware.com/News/Tax\\_News/Articles/Geithner\\_Expect\\_to\\_Release\\_Corporate\\_Tax\\_Reform\\_Proposal\\_by\\_Autumn.asp](http://www.bnasoftware.com/News/Tax_News/Articles/Geithner_Expect_to_Release_Corporate_Tax_Reform_Proposal_by_Autumn.asp).

<sup>21</sup> H.R.; 25, 86, 99, 462, 609 934, 937, 1040, 1074, 1396, 1634, 1733, 2911, 2382, 2945, 3338, 3400; H. Con. Res. 34; S. Res. 88.

<sup>22</sup> S. 1720.

<sup>23</sup> The information in this section was obtained from the *2011 Florida Tax Handbook*.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

### D. FISCAL COMMENTS: None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

### B. RULE-MAKING AUTHORITY: None.

### C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.



HM 717

2012

House Memorial

A memorial to the Congress of the United States,  
 urging Congress to cut the federal corporate tax rate.

WHEREAS, the combined United States average federal-state corporate income tax rate is over 39 percent, according to the Organization for Economic Cooperation & Development (OECD), meaning the United States imposes the second-highest overall statutory corporate tax rates in the industrialized world, much higher than the OECD average of 25 percent, and

WHEREAS, effective United States corporate tax rates are out of step with the rest of the world, with studies estimating the United States tax is between 4 and 17 percentage points higher than the averages of other countries, according to a Tax Foundation survey, and

WHEREAS, the federal corporate tax rate of 35 percent undermines the ability of every state in the nation to compete against lower-tax nations such as Canada, China, Great Britain, Ireland, Korea, and Singapore, and

WHEREAS, 75 nations have cut their corporate taxes since 2007, making it increasingly difficult for the United States to attract new business investment and jobs, and

WHEREAS, corporate taxes have been identified by the OECD as the most harmful tax for long-term economic growth by reducing investment, entrepreneurship, productivity, and wages, and

WHEREAS, according to the United States Census Bureau, federal corporate income tax collections in 2008 amounted to

HM717

2012

29 over \$2,000 for every American household, a tax that is borne by  
 30 every American in the form of lower wages, higher prices, or  
 31 lower dividends, and

32 WHEREAS, while many federal officials have identified  
 33 corporate tax competitiveness as a serious problem, the Federal  
 34 Government, as of yet, has no official policy regarding United  
 35 States tax competitiveness, NOW, THEREFORE,

36

37 Be It Resolved by the Legislature of the State of Florida:

38

39 That the Florida Legislature urges the United States  
 40 Congress to cut the federal corporate tax rate.

41 BE IT FURTHER RESOLVED that copies of this memorial be  
 42 dispatched to the President of the United States, to the  
 43 President of the United States Senate, to the Speaker of the  
 44 United States House of Representatives, and to each member of  
 45 the Florida delegation to the United States Congress.