HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 219 Nonprofit Cultural Organizations
SPONSOR(S): Sobel
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce		McDonald	Billmeier
2) Finance & Tax			
3) Transportation & Econ. Dev. Apps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

The bill creates s. 220.192, F.S., to provide for a credit against the corporate income tax for 50 percent of a contribution to a nonprofit cultural organization. The contribution must be $60,000 or more but the aggregate amount of contributions made by a corporation to nonprofit cultural organizations cannot exceed $600,000 in any single taxable year. Any amount above the allowable $600,000 is not eligible for a tax credit. A taxpayer who files a Florida consolidated income tax return may be allowed the credit on a consolidated return basis; however, the affiliated group is subject to the limitation of $600,000. If the credit for contributions is not fully used in any one year, the unused amount cannot be carried forward. Additionally, taxpayers cannot convey, assign, or transfer the credit for contributions to nonprofit cultural organizations to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. Application for the credit for contributions to nonprofit cultural organizations is required to be submitted to the Department of Revenue on a form prepared by the department.

The Department of Revenue and the Division of Cultural Affairs of the Department of State are required to develop a cooperative agreement to assist in the administration of the newly created section.

Rulemaking authority to implement the bill is given to both the Department of Revenue and the Division of Cultural Affairs of the Department of State.

The tax credit will reduce the base on which corporate taxes for entities that make contributions to eligible organizations are calculated, though the potential financial impact is yet to be determined. The bill has not been reviewed by the Revenue Estimating Conference.

The effective date of the bill is July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[x]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

The bill will reduce the base on which corporate taxes for entities that make contributions to eligible organizations are calculated, though the potential financial impact is yet to be determined. This will reduce the overall amount of these revenues that go into General Revenue.

The bill creates a tax credit that will have to be administered by the Department of Revenue and the Division of Cultural Affairs of the Department of State. The bill also requires for rules to be adopted by the two agencies.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Florida's Corporate Income Tax (Chapter 220, F.S.)

In 1971, the Florida constitution was amended to allow a corporate income tax. Florida's first Corporate Income Tax became effective in January 1972. The stated purpose of the code is "…to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares of certificates, and limited liability for all owners."

Corporations doing business in Florida must pay a corporate income tax of 5.5% on income earned in Florida. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using the weighted formula of 25% on property, 25% on payroll and 50% on sales.

Since 1987, Florida uses the Internal Revenue Code as a starting point for figuring Florida corporate income tax. This allows for administrative simplicity for both the state and for corporations since in general the corporation will only have to keep one set of books and apply one set of laws.

Florida has corporate income tax credits to encourage economic development. These credits include:

- capital investment tax credit (s. 220.191, F.S.),
- enterprise zone jobs credit (s. 220.181, F.S.),
- community contribution tax credit (s. 220.183, F.S.),
- enterprise zone property tax credit (s. 220.182, F.S.),
- rural job tax credit (s. 220.1895, F.S.), and
- urban high crime area job tax credit (s. 220.1895, F.S.).

Florida has tax credits for corporations who provide daycare facilities for their employees and tax credits for corporations that rehabilitate contaminated sites.[1] Florida also offers tax credits to corporations who make contributions to non-profit scholarship funding organizations.[2] Finally, there is a hazardous waste facility tax credit and a state housing tax credit.[3]

Each tax credit specifies the following general provisions:

- eligibility criteria for receipt of the credit, detail varies among the credits,
- amount of credit, usually based upon a percentage basis of wages, payments made, donations made, etc., depending upon the credit,
- maximum amount of credit for each corporation and maximum amount for all corporations annually,
- carry forward provisions for the tax credit and restrictions on credit transferal,
- agency certifying eligibility for receipt of tax credit, usually not the Department of Revenue, and
- responsibilities of the Department of Revenue and of the certifying agency, including authority to adopt rules specific to their responsibilities.

The Department of Revenue (DOR)[4] is the entity responsible for implementing the provisions of the code. The Department of Revenue is headed by the Governor and the Cabinet.

Department of State, Division of Cultural Affairs[5]

The Department of State, Division of Cultural Affairs, promotes programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State is known as "Florida's Chief Cultural Officer." Pursuant to s. 265.2862, F.S., the Division of Cultural Affairs is required to develop and conduct a general support program designed to supplement the financial support of cultural organizations that have a sustained commitment to cultural excellence and to recognize organizations for superior cultural contributions that have regional or statewide impact.

The Cultural Institutions Trust Fund is created in s. 265.2861, F.S. The trust fund was created to support the following:

- Statewide arts grants.
- Arts in Education and visiting arts programs.
- State Touring Program.
- Local arts agencies or state service organizations.

The Division of Cultural Affairs is required to establish by rule criteria for the award of grants to cultural organizations, including criteria relating to program quality, potential public exposure and benefit, fiscal stability, ability to properly administer grant funds, procedures for peer evaluation, and other matters deemed necessary and appropriate to further cultural institutions in the state.

Rulemaking

Chapter 120, F.S., the Administrative Procedure Act, establishes the process by which agencies adopt rules to implement delegations of statutory authority. Section 120.52(15), F.S., defines "rule" to mean

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[1] See ss. 220.19, F.S., and 220.1845, F.S., respectively.
[2] See s. 220.187, F.S.
[3] There are two separate hazardous waste credits in s. 220.184, F.S. One is for certain evaluation and permit fees incurred by any commercial hazardous waste facility and the other is a credit for the cost of stationary facility equipment used for recycling of hazardous waste in a commercial hazardous waste recycling facility. The state housing tax credit in s. 220.185, F.S., is allowed for designated projects as described in the section.
[4] The Department of Revenue is created in s. 20.21, F.S.
[5] The Department of State is created in s. 20.10, F.S.

> …each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule…[6]

Section 120.536, F.S., establishes limits on agency rulemaking power. That section states:

> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statutes. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

Further, under s. 120.54, F.S., rulemaking is not a matter of agency discretion. Each agency statement that meets the definition of a "rule" must be adopted as soon as feasible and practicable. Exceptions are authorized, but generally, pursuant to paragraph (1)(b) of the section, whenever an action requires rulemaking, rules must be drafted and formally proposed within 180 days after the effective date of the act, unless the implementing legislation provides otherwise.

Community Contribution Tax Credit Program

A similar corporate income tax credit to that being proposed by the bill is provided in s. 220.183, F.S., the community contribution tax credit program.

Under the community contribution tax credit program, corporations, insurance companies, and persons who collect or remit sales or use taxes may be able to receive tax credits for making donations to certain low-income housing and community development projects. Available tax credits under the program may be taken against sales or use taxes, corporate income taxes, and insurance premium taxes.[7] Tax credits are limited to 50 percent of the amount of a "community contribution" or donation to a maximum of $200,000 annually per donor.[8] The total amount of community contribution tax credits available per year under the program is $10 million.[9] Tax credits against sales or use taxes are granted as a refund against sales and use taxes reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.[10] Tax credits against corporate income taxes and insurance premium taxes re claimed against taxes due.[11]

Effect of Proposed Changes:

The bill creates s. 220.192, F.S., to provide for a credit against the corporate income tax for 50 percent of a contribution to a nonprofit cultural organization. The contribution must be $60,000 or more but the

[6] A number of exceptions are also contained in the definition, including internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with agency actions; and the preparation or modification of agency budgets, among other items.
[7] Sections 212.08(5)(q), 220.183, and 624.5105, F.S.
[8] Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.
[9] Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.
[10] Section 212.08(5)(q)1.b., F.S.
[11] Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

aggregate amount of contributions made by a corporation to nonprofit cultural organizations cannot exceed $600,000 in any single taxable year. Any amount above the allowable $600,000 is not eligible for a tax credit. A taxpayer who files a Florida consolidated income tax return may be allowed the credit on a consolidated return basis; however, the affiliated group is subject to the limitation of $600,000. If the credit for contributions is not fully used in any one year, the unused amount cannot be carried forward. Additionally, taxpayers cannot convey, assign, or transfer the credit for contributions to nonprofit cultural organizations to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. Application for the credit for contributions to nonprofit cultural organizations is required to be submitted to the Department of Revenue on a form prepared by the department.

The Department of Revenue and the Division of Cultural Affairs of the Department of State are required to develop a cooperative agreement to assist in the administration of the newly created section.

Rulemaking authority to implement the bill is given to both the Department of Revenue and the Division of Cultural Affairs of the Department of State.

The effective date of the bill is July 1, 2004.

C. SECTION DIRECTORY:

Section 1. Creates s. 220.192, F.S., providing credits for contributions to nonprofit cultural organizations; providing the purpose of the credit; providing definitions; providing authorization to grant the tax credit and limitations on individual credits; providing for administration for the credit granted; providing for rules.

Section 2. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See “Fiscal Comments.”

2. Expenditures:

   See “Fiscal Comments.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those entities that make contributions to eligible organizations in the amount of $60,000 up to $600,000 will receive a corporate income tax credit of 50 percent of the eligible contribution.

D. FISCAL COMMENTS:

The tax credit will reduce the base on which corporate taxes for entities that make contributions to eligible organizations are calculated, though the potential financial impact is yet to be determined. The bill has not been reviewed by the Revenue Estimating Conference.

No implementation costs have been provided by the Department of Revenue or the Division of Cultural Affairs of the Department of State.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Requires rules to be adopted by the Department of Revenue and the Division of Cultural Affairs fo the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The credit is “inapplicable” to a particular corporation after the aggregate amount of the contributions to such organizations given by the corporation in any one taxable year exceeds $600,000. Instead of providing that the credit is inapplicable, it may be appropriate to state that the tax credit is capped at $600,000.

In the community contribution tax credit, proposals for granting the tax credit require the prior approval of the Office of Tourism Trade, and Economic Development. Further, the total amount of tax credit which may be granted for all programs approved under that program is $10 million annually. This bill contains no prior approval requirement and establishes no limitation on annual totals for credits. The community contribution tax credit program, unlike the one established by this bill, permits a carrying forward of unused credits for up to five years.

The bill does not appear to be limited to contributions to Florida cultural organizations as the definition of “eligible cultural organization” means a nonprofit cultural organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

The terms “interdisciplinary” and “multidisciplinary” are not defined.

The bill provides no amendment to subsection 20.02(8), F.S., which directs the order in which credits are to be claimed against corporate income tax.

When there is a credit provision in ch. 220, F.S., there is generally a corresponding addition in s. 220.13, F.S., which prevents a taxpayer from receiving both a deduction and a credit for the same item. This bill does not provide or an addition that corresponds to the amount of the credit allowed.

A strike all amendment has been prepared by the sponsor to conform the bill to its Senate companion.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A