

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 219 w/CS Corporate Income Tax
SPONSOR(S): Sobel
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 406 (I)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>16 Y, 0 N w/CS</u>	<u>McDonald</u>	<u>Billmeier</u>
2) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
3) <u>Transportation & Econ. Dev. Apps. (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill provides 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. Applications shall be accepted on a first-come, first-served basis beginning July 1, 2004. The granting of a tax credit must be in writing and state the maximum credit allowable. A copy is to be submitted to the Department of Revenue to apply the credit to the tax liability of the business firm.

Additionally, the bill permits a credit of 50 percent of the amount of an eligible contribution to the cultural institutions trust fund. All proposals for the granting of the tax credit shall require prior approval of the Division of Cultural Affairs of the Department of State. The application and administration requirements are the same as for the other tax credit.

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 total amount of tax credits available under these provisions is \$5 million for one year. The act takes effect July 1, 2004 and repeals June 30, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: April 14, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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

¹ See ss. 220.19, F.S., and 220.1845, F.S., respectively.

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 Affairs⁵

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

...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

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.

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 provides 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

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.

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.

Additionally, the bill permits a credit of 50 percent of a contribution made to the Division of Cultural Affairs of the Department of State for deposit into the Cultural Institutions Trust Fund against any tax due for a taxable year. A credit that is not fully used in any one year may not be carried forward to another year. Further, a credit may not be conveyed, assigned, or transferred unless all of the assets of the corporation are so conveyed, assigned, or transferred.

Applications for participating in the tax credit program require prior approval of the Division of Cultural Affairs. A business must submit an application for tax credit to the division on a form adopted by rule. Approval must be granted in writing and must state the maximum credit allowable to the firm. A copy of approval must be transmitted to the executive director of the Department of Revenue. Both the Department of State and the Department of Revenue are authorized to adopt rules to implement the authority delegated by the section.

The bill provides that the newly-created tax credits are applied after credits enumerated in s. 220.187, F.S. The bill also includes these tax credits in the definition of "adjusted federal income" regarding those additions that must be added to taxable income.

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.

Total credits available under both of these programs are \$5 million, and the act creating the credits repeals June 30, 2005.

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

C. SECTION DIRECTORY:

Section 1. Creates corporate tax credit 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. Creates cultural contributions tax credit for monetary contribution to the Division of Cultural Affairs within the Department of State for deposit into the Cultural Institutions Trust Fund; providing for authorization to grant the credit of 50 percent of contribution; requiring prior approval; providing limitations; providing for administration for the credit granted; providing for rules.

Section 3. Provides legislative intent regarding application of credits.

Section 4. Requires tax credits under bill to be counted as income for federal income purposes.

Section 5. Limits total dollar amount of tax credits for all programs approved under bill.

Section 6. Repeals the bill on June 30, 2005.

Section 7. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The tax credits will reduce potential corporate income tax revenue by \$5 million. The tax credits are repealed on June 30, 2005.

2. Expenditures:

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

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.

Entities making contributions to the Cultural Institutions Trust Fund will receive a corporate income tax credit of 50% of eligible contributions. The bill does not contain a per-donor limitation on the amount of this contribution.

D. FISCAL COMMENTS:

None.

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:

The bill requires rules to be adopted by the Department of Revenue and the Division of Cultural Affairs of the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 13, 2004, the Committee on Commerce adopted a strike-all amendment to HB 219 that conformed the bill to its Senate companion, CS/CS/SB 406, and then passed HB 219 with a committee substitute. The committee substitute differs from the original bill in the following ways:

- Removes specific placement of language in the Florida Statutes.
- Adds “educational institutions that are also presenters or producers of cultural activities” to the definition of “eligible cultural organization.”
- Clarifies that an eligible cultural organization must engage in cultural activities in Florida.
- Removes requirement for a cooperative agreement for administration between the Division of Cultural Affairs and the Department of Revenue.
- Requires taxpayer to submit a separate application for the tax credit for each individual contribution that the taxpayer makes to an eligible cultural organization.
- Requires application forms to be established by the Division of Cultural Affairs.
- Gives responsibility for granting of all tax credits under the bill to the Division of Cultural Affairs of the Department of State, requires the credits to be granted on a first come, first served basis, requires that application acceptance begin July 1, 2004, and requires submission of information on credits granted to the Department of Revenue.
- Authorizes a tax credit for contributions to the Cultural Institutions Trust Fund.
 1. Limits the tax credit to 50 percent of the contribution made.
 2. Requires approval by the Division of Cultural Affairs of the Department of State.
 3. Provides application requirements.
 4. Requires notification of the Department of Revenue for purposes of applying the credit to the tax liability of the business firm.
 5. Prohibits carrying over of tax credit to following year or transfer of credit without transfer of all other assets.
 6. Provides rulemaking authority.
- Provides intent that credits against the corporate income tax granted under the bill be applied subsequent to those enumerated in s. 220.187, F.S.
- Requires that in computing federal income under s. 220.13, F.S., there shall be added to such taxable income the amount taken as a credit for the taxable year under sections 1 and 2 of the bill.
- Limits the total amount of tax credits that may be granted under the bill to \$5 million.
- Provides that the act expires June 30, 2005.