

By the Committee on Governmental Oversight and Productivity;  
and Senator Margolis

302-2137-04

1                                   A bill to be entitled  
2           An act relating to the corporate income tax;  
3           creating s. 220.192, F.S.; providing a credit  
4           against the tax for contributions to nonprofit  
5           cultural organizations; providing legislative  
6           purpose; defining terms; providing limitations  
7           on individual credits; providing for  
8           administration by the Department of Revenue and  
9           the Division of Cultural Affairs of the  
10          Department of State; requiring the department  
11          and the division to adopt rules; creating s.  
12          220.1921, F.S.; providing a tax credit for  
13          donations to the Cultural Institutions Trust  
14          Fund; providing that the unused amount of a  
15          credit may not be carried forward; prohibiting  
16          conveying, assigning, or transferring the  
17          credit to another entity except as specified;  
18          providing application procedures; providing for  
19          rulemaking by the Department of Revenue and the  
20          Department of State; amending s. 220.02, F.S.;  
21          adding ss. 220.192 and 220.1921, F.S., to the  
22          list that establishes the order in which  
23          credits are to be applied; amending s. 220.13,  
24          F.S.; redefining the term "adjusted federal  
25          income," to conform; providing an effective  
26          date.

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28   Be It Enacted by the Legislature of the State of Florida:

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30           Section 1.   Section 220.192, Florida Statutes, is  
31   created to read:

1           220.192 Credits for contributions to nonprofit  
2 cultural organizations.--

3           (1) PURPOSE.--The purpose of this section is to  
4 encourage private, voluntary contributions to organizations  
5 that promote cultural activities, either by encouraging the  
6 talents of creative individuals or by helping to provide an  
7 audience for cultural activities.

8           (2) DEFINITIONS.--As used in this section, the term:

9           (a) "Cultural" means the disciplines of dance, music,  
10 theater, visual arts, literature, media arts,  
11 interdisciplinary and multidisciplinary, and programs of  
12 museums.

13           (b) "Department" means the Department of Revenue.

14           (c) "Eligible contribution" means a monetary  
15 contribution from a taxpayer, subject to the restrictions  
16 provided in this section, to an eligible cultural  
17 organization.

18           (d) "Eligible cultural organization" means a nonprofit  
19 cultural organization that is exempt from federal income tax  
20 under s. 501(c)(3) of the Internal Revenue Code and that is  
21 engaged in cultural activities. The term includes educational  
22 institutions that are also presenters or producers of cultural  
23 activities.

24           (3) AUTHORIZATION TO GRANT CULTURAL ORGANIZATIONS TAX  
25 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS.--

26           (a) There is allowed a credit of 50 percent of the  
27 amount of an eligible contribution, which contribution is in  
28 the amount of \$60,000 or more, against any tax due for a  
29 taxable year under this chapter. However, such a credit is  
30 inapplicable to a particular corporation after the aggregate  
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1 amount of the contributions to such organizations given by the  
2 corporation in any one taxable year exceeds \$600,000.

3 (b) A taxpayer who files a Florida consolidated return  
4 as a member of an affiliated group pursuant to s. 220.131(1)  
5 may be allowed the credit on a consolidated return basis;  
6 however, the total credit taken by the affiliated group is  
7 subject to the limitation established under paragraph (a).

8 (4) ADMINISTRATION; RULES.--

9 (a) If the credit granted under this section is not  
10 fully used in any one year, the unused amount may not be  
11 carried forward. A taxpayer may not convey, assign, or  
12 transfer the credit authorized by this section to another  
13 entity unless all of the assets of the taxpayer are conveyed,  
14 assigned, or transferred in the same transaction.

15 (b) An application for a tax credit pursuant to this  
16 section shall be submitted to the department on forms  
17 established by rule of the department.

18 (c) The department and the Division of Cultural  
19 Affairs of the Department of State shall develop a cooperative  
20 agreement to assist in the administration of this section.

21 (d) The department shall adopt rules necessary to  
22 administer this section, including rules establishing  
23 application forms and procedures.

24 (e) The division shall adopt rules necessary to  
25 determine the eligibility of nonprofit cultural organizations.

26 Section 2. Section 220.1921, Florida Statutes, is  
27 created to read:

28 220.1921 Cultural contributions tax credit.--

29 (1) AUTHORIZATION TO GRANT CULTURAL CONTRIBUTIONS TAX  
30 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS.--

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1       (a) There shall be allowed a credit of 50 percent of a  
2 contribution made to the Division of Cultural Affairs of the  
3 Department of State for deposit into the Cultural Institutions  
4 Trust Fund against any tax due for a taxable year under this  
5 chapter.

6       (b) All proposals for the granting of the tax credit  
7 shall require the prior approval of the Division of Cultural  
8 Affairs of the Department of State.

9       (c) If the credit granted pursuant to this section is  
10 not fully used in any one year, the unused amount may not be  
11 carried forward. A taxpayer may not convey, assign, or  
12 transfer the credit authorized by this section to another  
13 entity unless all of the assets of the taxpayer are conveyed,  
14 assigned, or transferred in the same transaction.

15       (2) APPLICATION REQUIREMENTS.--

16       (a) Any business wishing to participate in this  
17 program must submit an application for the tax credit to the  
18 Division of Cultural Affairs of the Department of State on  
19 forms established by rule of the division.

20       (b) The business firm must submit a separate  
21 application for tax credit for each individual contribution  
22 that it makes to the Cultural Institutions Trust Fund.

23       (3) ADMINISTRATION.--

24       (a) The Division of Cultural Affairs of the Department  
25 of State may adopt rules pursuant to ss. 120.536(1) and 120.54  
26 to administer this section.

27       (b) The granting of tax credit by the Division of  
28 Cultural Affairs of the Department of State must be in writing  
29 and state the maximum credit allowable to the business firm. A  
30 copy of the granting of tax credit shall be transmitted to the  
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1 executive director of the Department of Revenue, who shall  
2 apply such credit to the tax liability of the business firm.

3 (c) The Department of Revenue may adopt rules pursuant  
4 to ss. 120.536(1) and 120.54 to administer this section.

5 Section 3. Subsection (8) of section 220.02, Florida  
6 Statutes, is amended to read:

7 220.02 Legislative intent.--

8 (8) It is the intent of the Legislature that credits  
9 against either the corporate income tax or the franchise tax  
10 be applied in the following order: those enumerated in s.  
11 631.828, those enumerated in s. 220.191, those enumerated in  
12 s. 220.181, those enumerated in s. 220.183, those enumerated  
13 in s. 220.182, those enumerated in s. 220.1895, those  
14 enumerated in s. 221.02, those enumerated in s. 220.184, those  
15 enumerated in s. 220.186, those enumerated in s. 220.1845,  
16 those enumerated in s. 220.19, those enumerated in s. 220.185,  
17 ~~and~~ those enumerated in s. 220.187, and those enumerated in  
18 ss. 220.192 and 220.1921.

19 Section 4. Subsection (1) of section 220.13, Florida  
20 Statutes, is amended to read:

21 220.13 "Adjusted federal income" defined.--

22 (1) The term "adjusted federal income" means an amount  
23 equal to the taxpayer's taxable income as defined in  
24 subsection (2), or such taxable income of more than one  
25 taxpayer as provided in s. 220.131, for the taxable year,  
26 adjusted as follows:

27 (a) Additions.--There shall be added to such taxable  
28 income:

29 1. The amount of any tax upon or measured by income,  
30 excluding taxes based on gross receipts or revenues, paid or  
31 accrued as a liability to the District of Columbia or any

1 state of the United States which is deductible from gross  
2 income in the computation of taxable income for the taxable  
3 year.

4 2. The amount of interest which is excluded from  
5 taxable income under s. 103(a) of the Internal Revenue Code or  
6 any other federal law, less the associated expenses disallowed  
7 in the computation of taxable income under s. 265 of the  
8 Internal Revenue Code or any other law, excluding 60 percent  
9 of any amounts included in alternative minimum taxable income,  
10 as defined in s. 55(b)(2) of the Internal Revenue Code, if the  
11 taxpayer pays tax under s. 220.11(3).

12 3. In the case of a regulated investment company or  
13 real estate investment trust, an amount equal to the excess of  
14 the net long-term capital gain for the taxable year over the  
15 amount of the capital gain dividends attributable to the  
16 taxable year.

17 4. That portion of the wages or salaries paid or  
18 incurred for the taxable year which is equal to the amount of  
19 the credit allowable for the taxable year under s. 220.181.  
20 The provisions of this subparagraph shall expire and be void  
21 on June 30, 2005.

22 5. That portion of the ad valorem school taxes paid or  
23 incurred for the taxable year which is equal to the amount of  
24 the credit allowable for the taxable year under s. 220.182.  
25 The provisions of this subparagraph shall expire and be void  
26 on June 30, 2005.

27 6. The amount of emergency excise tax paid or accrued  
28 as a liability to this state under chapter 221 which tax is  
29 deductible from gross income in the computation of taxable  
30 income for the taxable year.

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1           7. That portion of assessments to fund a guaranty  
2 association incurred for the taxable year which is equal to  
3 the amount of the credit allowable for the taxable year.

4           8. In the case of a nonprofit corporation which holds  
5 a pari-mutuel permit and which is exempt from federal income  
6 tax as a farmers' cooperative, an amount equal to the excess  
7 of the gross income attributable to the pari-mutuel operations  
8 over the attributable expenses for the taxable year.

9           9. The amount taken as a credit for the taxable year  
10 under s. 220.1895.

11           10. Up to nine percent of the eligible basis of any  
12 designated project which is equal to the credit allowable for  
13 the taxable year under s. 220.185.

14           11. The amount taken as a credit for the taxable year  
15 under s. 220.187.

16           12. The amount taken as a credit for the taxable year  
17 under ss. 220.192 and 220.1921.

18           (b) Subtractions.--

19           1. There shall be subtracted from such taxable income:

20           a. The net operating loss deduction allowable for  
21 federal income tax purposes under s. 172 of the Internal  
22 Revenue Code for the taxable year,

23           b. The net capital loss allowable for federal income  
24 tax purposes under s. 1212 of the Internal Revenue Code for  
25 the taxable year,

26           c. The excess charitable contribution deduction  
27 allowable for federal income tax purposes under s. 170(d)(2)  
28 of the Internal Revenue Code for the taxable year, and

29           d. The excess contributions deductions allowable for  
30 federal income tax purposes under s. 404 of the Internal  
31 Revenue Code for the taxable year.

1  
2 However, a net operating loss and a capital loss shall never  
3 be carried back as a deduction to a prior taxable year, but  
4 all deductions attributable to such losses shall be deemed net  
5 operating loss carryovers and capital loss carryovers,  
6 respectively, and treated in the same manner, to the same  
7 extent, and for the same time periods as are prescribed for  
8 such carryovers in ss. 172 and 1212, respectively, of the  
9 Internal Revenue Code.

10           2. There shall be subtracted from such taxable income  
11 any amount to the extent included therein the following:

12           a. Dividends treated as received from sources without  
13 the United States, as determined under s. 862 of the Internal  
14 Revenue Code.

15           b. All amounts included in taxable income under s. 78  
16 or s. 951 of the Internal Revenue Code.

17  
18 However, as to any amount subtracted under this subparagraph,  
19 there shall be added to such taxable income all expenses  
20 deducted on the taxpayer's return for the taxable year which  
21 are attributable, directly or indirectly, to such subtracted  
22 amount. Further, no amount shall be subtracted with respect to  
23 dividends paid or deemed paid by a Domestic International  
24 Sales Corporation.

25           3. In computing "adjusted federal income" for taxable  
26 years beginning after December 31, 1976, there shall be  
27 allowed as a deduction the amount of wages and salaries paid  
28 or incurred within this state for the taxable year for which  
29 no deduction is allowed pursuant to s. 280C(a) of the Internal  
30 Revenue Code (relating to credit for employment of certain new  
31 employees).



1           4. There shall be subtracted from such taxable income  
2 any amount of nonbusiness income included therein.

3           5. There shall be subtracted any amount of taxes of  
4 foreign countries allowable as credits for taxable years  
5 beginning on or after September 1, 1985, under s. 901 of the  
6 Internal Revenue Code to any corporation which derived less  
7 than 20 percent of its gross income or loss for its taxable  
8 year ended in 1984 from sources within the United States, as  
9 described in s. 861(a)(2)(A) of the Internal Revenue Code, not  
10 including credits allowed under ss. 902 and 960 of the  
11 Internal Revenue Code, withholding taxes on dividends within  
12 the meaning of sub-subparagraph 2.a., and withholding taxes on  
13 royalties, interest, technical service fees, and capital  
14 gains.

15           6. Notwithstanding any other provision of this code,  
16 except with respect to amounts subtracted pursuant to  
17 subparagraphs 1. and 3., any increment of any apportionment  
18 factor which is directly related to an increment of gross  
19 receipts or income which is deducted, subtracted, or otherwise  
20 excluded in determining adjusted federal income shall be  
21 excluded from both the numerator and denominator of such  
22 apportionment factor. Further, all valuations made for  
23 apportionment factor purposes shall be made on a basis  
24 consistent with the taxpayer's method of accounting for  
25 federal income tax purposes.

26           (c) Installment sales occurring after October 19,  
27 1980.--

28           1. In the case of any disposition made after October  
29 19, 1980, the income from an installment sale shall be taken  
30 into account for the purposes of this code in the same manner  
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1 that such income is taken into account for federal income tax  
2 purposes.

3 2. Any taxpayer who regularly sells or otherwise  
4 disposes of personal property on the installment plan and  
5 reports the income therefrom on the installment method for  
6 federal income tax purposes under s. 453(a) of the Internal  
7 Revenue Code shall report such income in the same manner under  
8 this code.

9 (d) Nonallowable deductions.--A deduction for net  
10 operating losses, net capital losses, or excess contributions  
11 deductions under ss. 170(d)(2), 172, 1212, and 404 of the  
12 Internal Revenue Code which has been allowed in a prior  
13 taxable year for Florida tax purposes shall not be allowed for  
14 Florida tax purposes, notwithstanding the fact that such  
15 deduction has not been fully utilized for federal tax  
16 purposes.

17 Section 5. This act shall take effect July 1, 2004.

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19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20 COMMITTEE SUBSTITUTE FOR  
21 SB 406

22

22 Adds "educational institutions that are also presenters or  
23 producers of cultural activities" to the definition of  
"eligible cultural organization."

24 Authorizes a tax credit for contributions to the Cultural  
25 Institutions Trust Fund.

26 Limits the tax credit to 50 percent of the contribution made.

27 Requires approval by the Division of Cultural Affairs of the  
28 Department of State.

29 Prohibits carrying over of tax credit to following year or  
30 transfer of credit without transfer of all other assets.

31 Provides rulemaking authority.