

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: SB 630

SPONSOR: Senator Margolis

SUBJECT: Corporate Income Tax; Credit Against Tax for Contributions to Nonprofit Cultural Organizations

DATE: February 14, 2005

REVISED: 02/23/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/2 amendments
2.			GE	
3.			WM	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill allows a credit of 50 percent of the amount of an eligible contribution to an eligible cultural organization, which contribution is in the amount of \$60,000 or more, against any tax due for a taxable year under ch. 220, F.S., the Income Tax Code. 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.

Additionally, the bill permits a credit of 50 percent of the amount of an eligible contribution to the cultural institutions trust fund.

The total amount of credit available under these provisions is \$5 million for one year.

II. Present Situation:

Chapter 220, F.S., is the Florida Income Tax Code. 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 or certificates, and limited liability for all owners. . . .”¹

The Department of Revenue (DOR)² is the entity responsible for implementing the provisions of the code. The DOR is headed by the Governor and Cabinet.

The Department of State,³ 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.

A Cultural Institutions Program is created in the Department of State by s. 265.2861(2), F.S. 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.

Additionally, under 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 division is required to adopt by rule criteria for awarding grants to cultural organizations.

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 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. . . .⁴

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

¹ Section 220.02(1), F.S.

² The Department of Revenue is created in s. 20.21, F.S.

³ The Department of State is created in s. 20.10, F.S.

⁴ 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.

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 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.

A corporate income tax credit is provided in s. 220.183, F.S.; the community contribution tax credit program. Under that 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.⁵ 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.⁶ The total amount of community contribution tax credits available per year under the program is \$10 million.⁷ 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.⁸ Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.⁹

III. Effect of Proposed Changes:

The bill states that the purpose of the section is to encourage private, voluntary contributions to organizations that promote cultural activities, either by encouraging the talents of creative individuals or by helping to provide an audience for cultural activities.

Definitions are provided in the bill for the following:

- "Cultural activities" means dance, music, theater, visual arts, literature, media arts, museum programs, and activities that combine two or more of those disciplines.
- "Department" means the Department of Revenue.

⁵ Sections 212.08(5)(q), 220.183, and 624.5105, F.S.

⁶ Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

⁷ Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

⁸ Section 212.08(5)(q)1.b., F.S.

⁹ Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

- “Division” means the Division of Cultural Affairs of the Department of State.
- “Eligible contribution” means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible cultural organization.
- “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, in compliance with s. 265.702, F.S.,¹⁰ and given priority ranking under rule 1T-1001, F.A.C.¹¹ This term also includes educational institutions that are also presenters or producers of cultural activities in Florida which otherwise meet these requirements.

The bill allows a credit of 50 percent of the amount of an eligible contribution, which contribution is in the amount of \$60,000 or more, against any tax due for a taxable year under ch. 220, F.S. 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.

A credit may be taken on a consolidated return basis if the taxpayer files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1), F.S.,¹² though the total credit taken by the affiliated group is subject to the \$600,000 limitation.

The bill prohibits carrying forward to the following year any unused credit granted by the section. Further, the section prohibits conveyance, assignment, or transfer of the credit to another entity unless all of the assets of the taxpayer are transferred in the same transaction.

The bill establishes that a tax credit pursuant to the section is to be applied for on a form established by the rule of the division, and applications shall be granted on a first come, first served basis beginning July 1, 2005.

A taxpayer must submit a separate application for each individual contribution it makes to a cultural organization, and the granting of tax credits by the division must be in writing and state the maximum credit available. A copy of the document granting the tax credit must be transmitted to the executive director of the Department of Revenue, who shall apply the credit to the taxpayer’s tax liability.

The Department of Revenue is directed to adopt rules necessary to administer these provisions, and the Division of Cultural Affairs is directed to adopt rules necessary to determine the eligibility of nonprofit cultural organizations.

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

¹⁰ Section 265.702, F.S., provides for grants to counties and municipalities and qualifying nonprofit corporations for the acquisition, renovation, or construction of regional cultural facilities.

¹¹ It appears the reference should be to Rule 1T-1.001, F.A.C.

¹² Section 220.131(1), F.S., permits the corporate parent of an affiliated group to elect to consolidate its taxable income with that of all other members of the group, regardless of whether such member is subject to tax under the code, and to return such consolidated taxable income, with certain specified limitations.

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 credit is applied after credits enumerated in s. 220.187, F.S.¹³ The bill also includes these tax credits in the definition of “adjusted federal income” regarding those additions that must be added to taxable income.

Total credits available under both of these programs are \$5 million, and sections 1-5 of the act creating the credits expires June 30, 2006.

The section has an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill permits tax credits for corporations that make contributions directly to an eligible institution. Total credits available are limited to \$5 million, and the program expires June 30, 2006.

B. Private Sector Impact:

Those entities that make contributions directly 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.

C. Government Sector Impact:

The tax credit will reduce potential corporate income tax revenue by \$5 million.

¹³ Section 220,187, F.S., provides credits for contributions to nonprofit scholarship-funding organizations.

VI. Technical Deficiencies:

Page 2, line 27 – It appears that the reference to Rule 1T-1001, F.A.C., should be to Rule 1T-1.001, F.A.C.

Page 5, line 10 – the reference to the “Cultural Institutions Trust Fund” should be changed to the “Fine Arts Trust Fund.”

VII. Related Issues:

According to the Department of State, the definition of an “eligible cultural organization” limits the recipients of this bill to two cultural organizations; and in the future to only very large institutions that are seeking state fixed capital funding for large facilities. A definition that would capture a larger number of eligible cultural organizations would be:

- (e) “Eligible cultural organization” means a nonprofit cultural organization that is:
1. Exempt from federal income tax under s. 501(c) (3) of the Internal Revenue Code;
 2. Incorporated pursuant to and in compliance with chapter 617, Florida Statutes; and
 3. Determined eligible to receive funding from programs administered under Rule 1T-1.001, Florida Administrative Code.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 204974 by Governmental Oversight and Productivity:

Modifies the definition of “eligible cultural organizations” to ensure that the eligible entities are Florida nonprofit corporations.

Barcode 214352 by Governmental Oversight and Productivity:

Removes a reference to an incorrect trust fund and inserts a reference to the “Fine Arts Trust Fund,” which is the correct trust fund.

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