

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941

Corporate Income Tax

SPONSOR(S): Sobel

TIED BILLS:

IDEN./SIM. BILLS: SB 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism Committee		McDonald	McDonald
2) Finance & Tax Committee			
3) Choice & Innovation Committee			
4) State Infrastructure Council			
5)			

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 Division of Cultural Affairs of the Department of State on a form established by the division. Applications shall be accepted on a first-come, first-served basis beginning July 1, 2005. The granting of a tax credit by the division 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 be deposited into the Fine Arts 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. The act takes effect July 1, 2005 and repeals June 30, 2006.

On February 9, 2005, the Revenue Estimating Conference met and estimated that the fiscal impact of the provisions of the bill upon General Revenue is (\$4) million for FY 2005-06 and (\$1) million for FY 2006-07.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – Two tax credits are created which administratively impact both the Department of Revenue and the Division of Cultural Affairs of the Department of State. The bill requires both the Department of Revenue to adopt rules to administer the tax credits created in the bill. The bill requires the Division of Cultural Affairs of the Department of State to adopt rules for eligibility determination of nonprofit cultural organizations.

Ensure lower taxes – The bill creates corporate income tax credits for one year. The total reduction in the corporate income taxes remitted under the credits is \$5 million.

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 Fine Arts Trust Fund is created in s. 265.284, F.S., for the purposes set forth by law. It is the only trust fund used for funds received for cultural programs under chapter 265, F.S. The Fine Arts Trust Fund consists of moneys appropriated to it by the Legislature and moneys contributed to the fund from any other source.⁶

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.

⁶ Until its repeal in 2005, there had also been a Cultural Institutions Trust Fund that had been specifically created to support statewide arts grants, arts in education and visiting arts programs, state touring program, and local arts agencies or state service organizations.

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...⁷

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.⁸ 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.⁹ The total amount of community contribution tax credits available per year under the program is \$10 million.¹⁰ 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.¹¹ Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.¹²

Effect of Proposed Changes:

Section 1 of the bill provides for a credit against the corporate income tax for 50 percent of a contribution to an eligible cultural organization. An "eligible cultural organization" is defined as 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.,¹³ and given priority ranking under rule 1T-1001,

⁷ 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.

⁸ Sections 212.08(5)(q), 220.183, and 624.5105, F.S.

⁹ Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

¹⁰ Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

¹¹ Section 212.08(5)(q)1.b., F.S.

¹² Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

¹³ 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.

F.A.C.¹⁴ This term also includes educational institutions that are also presenters or producers of cultural activities in Florida which otherwise meet these requirements.

The bill requires a minimum contribution of \$60,000 in order to be eligible for a credit against the corporate income tax. 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 Division of Cultural Affairs on a form established by the division. Applications shall be accepted on a first-come, first-served basis beginning July 1, 2005. The granting of a tax credit by the division must be in writing and state the maximum credit allowable. A copy must be submitted to the Department of Revenue to apply the credit to the tax liability of the business firm.

Section 2 of 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 Fine Arts Trust Fund against any tax due for a taxable year.¹⁵ 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. The application and administration requirements are the same as for the tax credit in section 1 of the bill.

The bill authorizes both the Division of the Department of State and the Department of Revenue to adopt rules to implement the authority delegated by the bill for both tax credits.

The bill provides that the newly-created tax credits are applied after credits enumerated in s. 220.187, F.S.¹⁶ 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 the act creating the credits repeals June 30, 2006.

The effective date of the bill is July 1, 2005.

C. SECTION DIRECTORY:

Section 1 creates a 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 a cultural contributions tax credit for monetary contribution to the Division of Cultural Affairs within the Department of State for deposit into the Fine Arts 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.

¹⁴ The reference should be to Rule 1T-1.001, F.A.C.

¹⁵ On line 124 of the bill, reference is made to contributions to the Cultural Institutions Trust Fund which is no longer in existence. Reference should conform with earlier reference to the Fine Arts Trust Fund.

¹⁶ Section 220.187, F.S., provides credits for contributions to nonprofit scholarship-funding organizations.

Section 4 requires tax credits under the 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 sections 1 – 5 of the bill on June 30, 2006.

Section 7 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	<u>FY 2005-06</u>	<u>FY 2006-07</u>
General Revenue	-\$4,000,000	-\$1,000,000
2. Expenditures:		
Minimal. 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.

Entities making contributions to the Fine Arts 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:

On February 9, 2005, the Revenue Estimating Conference met and estimated that the fiscal impact of the provisions of the bill upon General Revenue is (\$4) million for FY 2005-06 and (\$1) million for FY 2006-07. The tax credits will reduce potential corporate income tax revenue by \$5 million. The tax credits are repealed on June 30, 2006.

According to the Department of State, they anticipate no expense beyond time to develop a definition appropriate to the process and adopt or amend existing rules to incorporate appropriate references. However, if a large number of organizations outside the department's current "clients" should be presented for eligible contribution determination; there could be a need to hire OPS to assist.

The Department of Revenue states that there will be fiscal impact on the department to implement the provisions of the bill.

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:

There are two drafting errors in the legislation:

- On line 52, reference to the rule should be cited as 1T-1.001.
- On line 124, reference is made to the "Cultural Institutions Trust Fund" which was repealed in 2004. The reference should be changed to the "Fine Arts Trust Fund" to conform it to an earlier reference in the bill.

Initial Comments Received from the Department of State

The Division of Cultural Affairs stated that the definition of an "eligible cultural organization" in section 1 of the bill limits the recipients of the bill presently to only two cultural organizations; and in the future to only very large institutions that are seeking state fixed capital funding for large facilities. The division suggests a broader definition so that cultural organizations statewide might benefit from the financial support enabled in the bill. The suggestion is to remove lines 50 through 53 and insert:

2. Incorporated pursuant to an 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.

Additional Comments from the Department of State

After further review of the bill, the Division of Cultural Affairs expressed concern about the requirements for the division to develop and receive applications for the granting of tax credits as well as language stating that the division grants the tax credit. The division suggested that the actual granting of a tax credit is the purview of the Department of Revenue. The division suggested that "written request" be substituted for "application" and that "verification of tax credit eligibility" be substituted for "granting of tax credit" where those terms as they relate to the division appear in the bill.

Comments Received from the Department of Revenue

The following issues were raised by the Department of Revenue in its review of the bill:

- The definition of "eligible cultural organization" on page 2 of the bill does not require that such organizations perform their activities in Florida, with the exception of the educational institutions that are also presenters or producers of cultural activities.
- In section 1 of the bill, the Department of Revenue thinks that there is an overlapping of duties in the area of form creation which may cause confusion between the department and the Division of Cultural Affairs. Specifically, the Division of Cultural Affairs is required to establish

an application form for the credit for contributions to non profit cultural organizations, and the Department of Revenue is required to adopt rules to administer the section, including rules establishing application forms and procedures.

- The department commented that placing the order of credit provision in the Laws of Florida, as done by section 3 of the bill, may cause confusion as to which credits should be claimed first if s. 220.02(8), F.S., is amended to provide for other credits.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES