

Bill No. SB 1230

Barcode 132332

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Margolis) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

220.192 Employee fitness tax credits.--

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

(a) A taxpayer shall be allowed a credit against any tax due for a taxable year under this chapter equal to 10 percent of the taxpayer's expenditures during the taxable year for:

1. The costs of equipping, operating, and maintaining a facility owned by the taxpayer, located on the taxpayer's premises, and used exclusively for the purpose of promoting the physical fitness of the taxpayer's employees in this state, including, but not limited to, a gymnasium, weight training room, aerobics workout space, swimming pool, running

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1 track, or any indoor or outdoor court, field, or other site  
2 used for competitive sports events or games;

3 2. The costs, to the extent not covered in  
4 subparagraph 1., of equipping and providing any related  
5 financial support for an amateur athletic team that engages in  
6 vigorous athletic activity and is under the sponsorship of the  
7 taxpayer, either alone or jointly with one or more other  
8 employers, if the membership of the team consists entirely of  
9 employees of the taxpayer in this state or the taxpayer and  
10 another employer or employers with whom the taxpayer has  
11 joined to provide employee fitness equipment and financial  
12 support;

13 3. The cost of subsidizing an employee's membership to  
14 a health studio as defined by s. 501.0125; and

15 4. Fifty percent of the cost of employing a qualified  
16 person or organization to provide, on the taxpayer's business  
17 premises in this state:

18 a. Information and guidance on subjects relating to  
19 personal and family health, such as nutrition, hygiene, and  
20 methods of preventing, recognizing, and combating substance  
21 abuse; or

22 b. Instruction in and opportunity for fitness  
23 enhancement activity, including, but not limited to, dance or  
24 other aerobic exercise, yoga, muscle stretching, and martial  
25 arts routines.

26 (b) Credits authorized under this section for any  
27 taxpayer may not exceed 50 percent of the tax due under this  
28 chapter for any taxable year.

29 (c) Credits authorized under this section for any  
30 taxpayer may not exceed \$50 multiplied by the average of the  
31 number of full-time equivalent employees of the taxpayer in

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1 this state as of the last day of the 3rd, 6th, 9th, and 12th  
2 months of the taxable year.

3 (d) Two or more taxpayers may join together to  
4 establish and operate an employee fitness facility, provide  
5 employee fitness equipment and financial support, or provide  
6 employee fitness instruction in accordance with this section.  
7 The participating taxpayers may apportion the annual employee  
8 fitness credits in any manner they consider appropriate, but a  
9 jointly operated employee fitness facility established under  
10 this section may not receive more than \$50 multiplied by the  
11 average of the number of full-time equivalent employees of the  
12 participating taxpayers in this state as of the last day of  
13 the 3rd, 6th, 9th, and 12th months of the taxable year.

14 (e) A taxpayer, or two or more taxpayers acting  
15 jointly, may employ a not-for-profit corporation to:  
16 1. Operate an employee fitness facility;  
17 2. Provide employee fitness equipment and financial  
18 support; or

19 3. Provide employee fitness instruction,  
20  
21 on the taxpayers premises in this state.

22 (f) If the credit granted under this section is not  
23 fully used in any one year because of insufficient tax  
24 liability on the part of the corporation, the unused amount  
25 may be carried forward for a period not to exceed 5 years. The  
26 carryover credit may be used in a subsequent year when the tax  
27 imposed by this chapter for that year exceeds the credit for  
28 which the corporation is eligible in that year under this  
29 section after applying the other credits and unused carryovers  
30 in the order provided by s. 220.02(8).

31 (g) A taxpayer that files a consolidated return in

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1 this state as a member of an affiliated group under s. 220.131  
2 may be allowed the credit on a consolidated return basis.

3 (h) A taxpayer that is eligible to receive credit  
4 under s. 624.5108 is ineligible to receive credit under this  
5 section.

6 (i) An expenditure by a taxpayer to provide any of the  
7 employee fitness benefits described in paragraph (a) does not  
8 qualify for a credit under this section unless the benefit is  
9 extended equally to all full-time employees in this state.

10 (j) Credits authorized under this section are not  
11 available to any professional sports franchise or facility or  
12 to any taxpayer whose primary business activity is operating a  
13 fitness facility or providing any services eligible for  
14 credits under this section.

15 (2) ADMINISTRATION.--

16 (a) The Department of Revenue shall adopt rules and  
17 forms necessary to administer this section, including rules to  
18 provide for cooperative arrangements between taxpayers and  
19 not-for-profit corporations.

20 (b) Verification of payments to a not-for-profit  
21 corporation or to a person who provides health or fitness  
22 instruction to a taxpayer's employees must be in writing and  
23 must be retained by the taxpayer in support of the credit  
24 claimed on the tax return.

25 (c) Application for credit for payments made to  
26 construct or rehabilitate a facility used for the purpose of  
27 promoting the physical fitness of the taxpayer's employees in  
28 this state must be submitted to the department within 6 months  
29 after the local building inspector deems that the construction  
30 or rehabilitation of the facility is substantially completed.  
31 Application for credit for eligible expenditures pursuant to

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1 paragraph (1)(a) must be submitted to the department with the  
2 tax return on which the credit is claimed.

3 (d) A business that files an amended return for a  
4 taxable year may not receive any amount of credit or credit  
5 carryforward pursuant to this section in excess of the amount  
6 claimed by the business on its original return for the taxable  
7 year. This subsection does not apply to increases in the  
8 amount of credit claimed under this section on an amended  
9 return due to the use of any credit amount previously carried  
10 forward for the taxable year on the original return or any  
11 eligible prior year under paragraph (1)(f).

12 (3) EXPIRATION.--This section expires on December 31,  
13 2016, except that paragraph (1)(f), which relates to carryover  
14 credits, does not expire on that date.

15 (4) DEFINITIONS.--As used in this section, the term:

16 (a) "Amateur athletic team" means a team of persons  
17 who engage in competitive athletic events for which no  
18 monetary remuneration is provided, all of whom are employed by  
19 the taxpayer or an employer with whom the taxpayer has joined  
20 to provide employee fitness equipment and financial support.

21 (b) "Qualified person" means a person certified by a  
22 recognized national organization to provide the instruction  
23 for which a tax credit is being sought.

24 (c) "Vigorous athletic activity" means exertion that  
25 makes a person sweat and breathe hard, such as basketball,  
26 soccer, running, swimming laps, fast bicycling, fast dancing,  
27 and similar aerobic activities.

28 Section 2. Subsection (8) of section 220.02, Florida  
29 Statutes, is amended to read:

30 220.02 Legislative intent.--

31 (8) It is the intent of the Legislature that credits

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1 against either the corporate income tax or the franchise tax  
 2 be applied in the following order: those enumerated in s.  
 3 631.828, those enumerated in s. 220.191, those enumerated in  
 4 s. 220.181, those enumerated in s. 220.183, those enumerated  
 5 in s. 220.182, those enumerated in s. 220.1895, those  
 6 enumerated in s. 221.02, those enumerated in s. 220.184, those  
 7 enumerated in s. 220.186, those enumerated in s. 220.1845,  
 8 those enumerated in s. 220.19, those enumerated in s. 220.185,  
 9 ~~and~~ those enumerated in s. 220.187, and those enumerated in s.  
 10 220.192.

11 Section 3. Paragraph (a) of subsection (1) of section  
 12 220.13, Florida Statutes, is amended to read:

13 220.13 "Adjusted federal income" defined.--

14 (1) The term "adjusted federal income" means an amount  
 15 equal to the taxpayer's taxable income as defined in  
 16 subsection (2), or such taxable income of more than one  
 17 taxpayer as provided in s. 220.131, for the taxable year,  
 18 adjusted as follows:

19 (a) Additions.--There shall be added to such taxable  
 20 income:

21 1. The amount of any tax upon or measured by income,  
 22 excluding taxes based on gross receipts or revenues, paid or  
 23 accrued as a liability to the District of Columbia or any  
 24 state of the United States which is deductible from gross  
 25 income in the computation of taxable income for the taxable  
 26 year.

27 2. The amount of interest which is excluded from  
 28 taxable income under s. 103(a) of the Internal Revenue Code or  
 29 any other federal law, less the associated expenses disallowed  
 30 in the computation of taxable income under s. 265 of the  
 31 Internal Revenue Code or any other law, excluding 60 percent

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1 of any amounts included in alternative minimum taxable income,  
2 as defined in s. 55(b)(2) of the Internal Revenue Code, if the  
3 taxpayer pays tax under s. 220.11(3).

4           3. In the case of a regulated investment company or  
5 real estate investment trust, an amount equal to the excess of  
6 the net long-term capital gain for the taxable year over the  
7 amount of the capital gain dividends attributable to the  
8 taxable year.

9           4. That portion of the wages or salaries paid or  
10 incurred for the taxable year which is equal to the amount of  
11 the credit allowable for the taxable year under s. 220.181.  
12 The provisions of this subparagraph shall expire and be void  
13 on June 30, 2005.

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

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

23           7. That portion of assessments to fund a guaranty  
24 association incurred for the taxable year which is equal to  
25 the amount of the credit allowable for the taxable year.

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

31           9. The amount taken as a credit for the taxable year

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1 under s. 220.1895.

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

5 11. The amount taken as a credit for the taxable year  
6 under s. 220.187.

7 12. The amount taken as a credit under s. 220.192.

8 Section 4. Section 624.5108, Florida Statutes, is  
9 created to read:

10 624.5108 Employee fitness tax credits; definitions;  
11 authorization; limitations; eligibility and application  
12 requirements; administration; expiration.--

13 (1) DEFINITIONS.--As used in this section, the term:

14 (a) "Amateur athletic team" means a team of persons  
15 who engage in competitive athletic events for which no  
16 monetary remuneration is provided, all of whom are employed by  
17 the taxpayer or an employer with whom the taxpayer has joined  
18 to provide employee fitness equipment and financial support.

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

20 (c) "Employee fitness costs" means:

21 1. The costs of equipping, operating, and maintaining  
22 a facility owned by the taxpayer, located on the taxpayer's  
23 premises, and used exclusively for the purpose of promoting  
24 the physical fitness of the taxpayer's employees in this  
25 state, including, but not limited to, a gymnasium, weight  
26 training room, aerobics workout space, swimming pool, running  
27 track, or any indoor or outdoor court, field, or other site  
28 used for competitive sports events or games;

29 2. The costs, to the extent not covered in  
30 subparagraph 1., of equipping and providing any related  
31 financial support for an amateur athletic team that engages in



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1 vigorous athletic activity under the sponsorship of the  
 2 taxpayer, either alone or jointly with one or more other  
 3 employers, if the membership of the team consists entirely of  
 4 employees of the taxpayer in this state or the taxpayer and  
 5 another employer or employers, as appropriate; and

6 3. Fifty percent of the cost of employing a qualified  
 7 person or organization to provide, on the taxpayer's business  
 8 premises in this state:

9 a. Information and guidance on subjects relating to  
 10 personal and family health, such as nutrition, hygiene, and  
 11 methods of preventing, recognizing, and combating substance  
 12 abuse; or

13 b. Instruction in and opportunity for fitness  
 14 enhancement activity, including, but not limited to, dance or  
 15 other aerobic exercise, yoga, muscle stretching, and martial  
 16 arts routines.

17 (d) "Qualified person" means a person certified by a  
 18 recognized national organization to provide the instruction  
 19 for which a tax credit is being sought.

20 (e) "Vigorous athletic activity" means exertion that  
 21 makes a person sweat and breathe hard, such as basketball,  
 22 soccer, running, swimming laps, fast bicycling, fast dancing,  
 23 and similar aerobic activities.

24 (2) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

25 (a) A credit of 10 percent of employee fitness costs  
 26 incurred by an insurer during the taxable year is allowed  
 27 against any tax due for a taxable year under ss. 624.509 and  
 28 624.510.

29 (b) Credits authorized under this section for any  
 30 taxpayer may not exceed 50 percent of the tax due under this  
 31 chapter for any taxable year.

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1       (c) Credits authorized under this section for any  
 2 taxpayer may not exceed \$50 multiplied by the average of the  
 3 number of full-time equivalent employees of the insurer in  
 4 this state as of the last day of the 3rd, 6th, 9th, and 12th  
 5 months of the taxable year.

6       (d) Two or more taxpayers may join together to  
 7 establish and operate an employee fitness facility, provide  
 8 employee fitness equipment and financial support, or provide  
 9 employee fitness instruction in accordance with this section.  
 10 The participating taxpayers may apportion the annual employee  
 11 fitness credits in any manner they consider appropriate, but a  
 12 jointly operated employee fitness facility established under  
 13 this section may not receive more than \$50 multiplied by the  
 14 average of the number of full-time equivalent employees of the  
 15 participating taxpayers in this state as of the last day of  
 16 the 3rd, 6th, 9th, and 12th months of the taxable year.

17       (e) A taxpayer, or two or more taxpayers acting  
 18 jointly, may employ a not-for-profit corporation to:

- 19           1. Operate an employee fitness facility;
- 20           2. Provide employee fitness equipment and financial  
 21 support; or

22           3. Provide employee fitness instruction,  
 23  
 24 on the taxpayers premises in this state.

25       (f) If the credit granted under this section is not  
 26 fully used in any one year because of insufficient tax  
 27 liability on the part of the insurer, the unused amount may be  
 28 carried forward for a period not to exceed 5 years. The  
 29 carryover credit may be used in a subsequent year when the tax  
 30 imposed by ss. 624.509 and 624.510 for that year exceeds the  
 31 credit for which the insurer is eligible in that year under

1 this section.

2       (3) An expenditure by an insurer to provide any of the  
3 employee fitness benefits described in paragraph (1)(a) does  
4 not qualify for a credit under this section unless the benefit  
5 is extended equally to all full-time employees in this state.

6       (4) ADMINISTRATION.--

7       (a) The Department of Revenue shall adopt rules and  
8 forms necessary to administer this section, including rules to  
9 provide for cooperative arrangements between taxpayers and  
10 not-for-profit corporations.

11       (b) Verification of payments to a not-for-profit  
12 corporation or to a person who provides health or fitness  
13 instruction to a taxpayer's employees must be in writing and  
14 must be retained by the taxpayer in support of the credit  
15 claimed on the tax return.

16       (c) Application for credit for payments made to  
17 construct or rehabilitate a facility used for the purpose of  
18 promoting the physical fitness of a taxpayer's employees in  
19 this state must be submitted to the department within 6 months  
20 after the construction or rehabilitation of the facility is  
21 deemed to be substantially completed by the local building  
22 code inspector. Application for credit for eligible  
23 expenditures pursuant to paragraph (2)(a) must be submitted to  
24 the department with the tax return on which the credit is  
25 claimed.

26       (d) An insurer that files an amended return for a  
27 taxable year is not allowed any amount of credit or credit  
28 carryforward pursuant to this section in excess of the amount  
29 claimed by such insurer on its original return for the taxable  
30 year. The provisions of this subsection do not apply to  
31 increases in the amount of credit claimed under this section

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1 on an amended return due to the use of any credit amount  
2 previously carried forward for the taxable year on the  
3 original return or any eligible prior year under paragraph  
4 (2)(f).

5 (5) EXPIRATION.--This section expires on December 31,  
6 2016, except that paragraph (2)(d), which relates to carryover  
7 credits, does not expire on that date.

8 Section 5. Subsection (7) of section 624.509, Florida  
9 Statutes, is amended to read:

10 624.509 Premium tax; rate and computation.--

11 (7) Credits and deductions against the tax imposed by  
12 this section shall be taken in the following order: deductions  
13 for assessments made pursuant to s. 440.51; credits for taxes  
14 paid under ss. 175.101 and 185.08; credits for income taxes  
15 paid under chapter 220, the emergency excise tax paid under  
16 chapter 221, and the credit allowed under subsection (5), as  
17 these credits are limited by subsection (6); employee fitness  
18 tax credits authorized under s. 624.5108; and all other  
19 available credits and deductions.

20 Section 6. This act shall take effect January 1, 2007,  
21 and shall apply to tax years beginning on or after that date.

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23

24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause

27

28 and insert:

29 A bill to be entitled  
30 An act relating to tax credits for certain  
31 taxpayer expenditures to promote employee

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1 fitness; creating s. 220.192, F.S.; providing a  
2 credit against the tax on corporate income for  
3 certain taxpayer expenditures relating to  
4 providing employee fitness facilities or  
5 supporting fitness-related activities by  
6 employees; defining terms; amending s. 220.02,  
7 F.S.; providing the order in which credits  
8 against the corporate income tax shall be  
9 taken; amending s. 220.13, F.S.; adding the  
10 amount taken as a credit under s. 220.192,  
11 F.S., to adjusted federal income; creating s.  
12 624.5108, F.S.; providing a credit against the  
13 tax on insurers for employee fitness costs, as  
14 defined in this act, which are incurred by an  
15 insurer; amending s. 624.509, F.S.; providing  
16 for the order of credits against the tax on  
17 insurers; providing an effective date.

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