

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: Commerce and Consumer Services Committee

BILL: CS/SB 1230

SPONSOR: Commerce and Consumer Services Committee and Senator Margolis

SUBJECT: Tax Credit Employee Fitness

DATE: March 8, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	<u>WM</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for an employee fitness tax credit that may be applied against a business' corporate income or insurance premium tax liability. A business may receive a tax credit equal to 10 percent of: the cost of equipping and operating an employee fitness facility, the cost of sponsoring an amateur athletic team, and 50 percent of the cost of employing a qualified person to teach a fitness or health class. Credits authorized may not exceed 50 percent of a business' corporate or insurance premium tax due in any taxable year, and any unused credit amount may be carried forward for up to five years. This bill authorizes the Department of Revenue (DOR) to adopt rules to administer the tax credit. The provisions of this bill are scheduled to expire December 31, 2016.

This bill creates sections 220.192 and 624.5108 of the Florida Statutes and amends sections 220.02, 220.13, and 624.509 of the Florida Statutes.

II. Present Situation:

Corporate Income Tax

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

¹ Section 220.02(1), F.S.

The Department of Revenue (DOR) is responsible for implementing the provisions of the corporate income tax code. Corporations doing business in Florida must pay a corporate income tax of 5.5 percent on income earned in Florida. Florida piggybacks the federal income tax code in its determination of taxable income. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll and 50 percent on sales. All corporations receive a standard \$5,000 exemption from the corporate income tax, and the following types of businesses are exempt completely from corporate income tax: Chapter S Corporations, Master Limited Partnerships, and Limited Liability Companies.

In addition to exemptions, Florida has several corporate income tax credit programs, including:

- Capital Investment Tax Credit² - a business that expands or locates in a high impact sector or target industry, makes a capital investment of at least \$25 million, and creates a certain number of jobs is eligible for an annual credit of up to 5 percent of eligible capital costs for up to 20 years.
- Child Care Facility³ - a business may be eligible for a credit equal to: 50 percent of the start up costs of a child care facility operated for its employees, \$50 times the number of children enrolled in a child care facility for its employees; or 50 percent of payments made to an off-site child care facility.
- Community Contribution Tax Credit⁴ - a business that makes a community contribution to an affordable housing or community redevelopment project is eligible for a credit equal to 50 percent of the amount of the contribution.
- Enterprise Zone Jobs⁵ - a business located in an enterprise zone that increases its number of full-time jobs is eligible for a credit, the amount of which is based on the wage of the new employee.
- Enterprise Zone Property Tax⁶ - a business that locates, expands, or rebuilds in an enterprise zone may be eligible for a credit equal to the ad valorem taxes paid on the new, expanded, or rebuilt property.
- Hazardous waste facility tax credit⁷ - an owner of any commercial hazardous waste facility who incurs expenses for hydrologic, geologic, or soil site evaluation and permit fees required by the Department of Environmental Protection, may be eligible for a credit equal to the amount of those expenses.
- Rehabilitation of Contaminated Sites⁸ - a business that rehabilitates a brownfield or dry-cleaning-solvent-contaminated site is eligible for a credit equal to the amount of 35 percent of the cleanup costs.
- Rural and Urban High-Crime Area Job Tax Credit⁹ - a business in a rural or urban area may be eligible for a credit equal to \$500 to \$1500 for each new job it creates.

² Section 220.191, F.S.

³ Section 220.19, F.S.

⁴ Section 220.183, F.S.

⁵ Section 220.181, F.S.

⁶ Section 220.182, F.S.

⁷ Section 220.184, F.S.

⁸ Section 220.1845, F.S.

⁹ Section 220.1895, F.S.

- Scholarship Funding Organizations¹⁰ - a business that makes a contribution to a non-profit scholarship funding organization is eligible for a credit in an amount equal to such contribution.
- State housing tax credit¹¹ - a credit of up to 9 percent for certain housing projects qualified through the Florida Housing Finance Corporation.

Insurance Premium Tax

Taxes are imposed on insurance premiums and paid by insurance companies at the following rates: 1.75 percent on gross premiums minus reinsurance and return premiums; 1 percent on annuity premiums; 1.6 percent on self insurers; and 5 percent on surplus lines premiums and independently procured coverage.

Corporate income tax and the emergency excise tax paid to Florida are credited against premium tax liability. Exemptions are allowed on annuity premiums paid by annuity policy or contract holders in this state, if the savings are passed on to the consumer. A credit is allowed against the premium tax equal to 15 percent of the amount paid by the insurer in salaries to employees located or based in Florida who are covered by unemployment compensation.

Additional Insurance Premium tax credit programs include:

- Community Contributions Tax Credit Program¹² - a business that makes a community contribution to an affordable housing or community redevelopment project is eligible for a credit equal to 50 percent of the amount of the contribution.
- Capital Company Investment Credit¹³ - any certified investor who makes an investment of certified capital may be eligible for a credit equal to the amount of the certified capital investment.
- Capital Investment Tax Credit¹⁴ - a business that expands or locates in a high impact sector or target industry, makes a capital investment of at least \$25 million, and creates a certain number of jobs is eligible for an annual credit of up to 5 percent of eligible capital costs for up to 20 years.
- Child Care Credit¹⁵ - a business may be eligible for a credit equal to: 50 percent of the start up costs of a child care facility operated for its employees, \$50 times the number of children enrolled in a child care facility for its employees; or 50 percent of payments made to an off-site child care facility.

Fitness Initiatives

Florida

Currently, Florida has no tax incentive programs relating to fitness or employee fitness. However, several entities focus on promoting health and fitness within the state.

¹⁰ Section 220.187, F.S.

¹¹ Section 220.185, F.S.

¹² Section 624.5105, F.S.

¹³ Section 288.99, F.S.

¹⁴ Section 220.191(2), F.S.

¹⁵ Section 624.5107, F.S.

- Department of Health- Obesity Prevention Program¹⁶ - The program is dedicated to preventing obesity in Florida by disseminating information, implementing and evaluating pilot programs, collaborating with local agencies and the school system, overseeing community-based outreach programs, and coordinating employee wellness activities.
- Florida Sports Foundation¹⁷ - the foundation is a public-private, not-for-profit corporation that assists the Governor's Office of Tourism, Trade, and Economic Development (OTTED) in promoting and developing Florida's sports industry, related industries; and amateur athletic participation. The foundation oversees several sports and fitness programs, including: the Major and Regional Sports Grant Programs; Florida Youth Golf Program; Sunshine State Games; Senior Games; and Fit Kids Physical Fitness Program.¹⁸
- Governor's Task Force on Obesity¹⁹ – The Governor established the task force by executive order in 2003 to address the rising rates of overweight and obesity in adults and youth. In 2004, the task force, in conjunction with the Department of Health, published a report entitled "Obesity in Florida" outlining recommendations to promote and improve health and fitness in Florida.²⁰

National

Wellness Councils of America (WELCOA)²¹ is a national, non-profit organization dedicated to promoting healthier lifestyles, especially through health promotion initiatives at work. WELCOA provides businesses with strategies to establish sound wellness programs, and serves as an information center for worksite wellness. WELCOA has an annual "Well Workplace" competition; businesses compete based on a set of criteria for an award and to be recognized as one of America's healthiest companies.

Fitness Incentives in other States²²

Several states have proposed legislation in 2006 relating to employee fitness:

- Mississippi – proposed to provide an income tax credit to businesses that incurred costs to promote employee fitness. Eligible costs would include: constructing or operating a gym, and providing fitness or health classes. The credit amount was proposed to be equal to the lesser of 10 percent of the costs incurred to promote employee fitness or 50 percent of the business' tax liability.
- New York – proposed to provide a tax credit of up to \$1,000 to businesses with qualified expenses for work wellness.
- Wisconsin – proposed to provide an income and franchise tax credit in an amount equal to the expenses incurred by a business to provide health or fitness programs.

¹⁶ <http://www.doh.state.fl.us/Family/obesity/index.html>

¹⁷ Section 288.1229, F.S.

¹⁸ House Tourism 2006 Interim Project Report, Sports Economic Development in Florida.

¹⁹ <http://www.doh.state.fl.us/Family/GTFOE/index.html>.

²⁰ <http://www.doh.state.fl.us/Family/GTFOE/report.pdf>.

²¹ <http://welcoa.org/presskit/index.php>.

²² Source: National Conference of State Legislatures (NCSL), February 2006.

In the past, several states have also proposed: health insurance premium discounts for wellness activities or participation, task forces or committees on workplace wellness, and nutrition education.

III. Effect of Proposed Changes:

Section 1 creates s. 220.192, F.S., providing for an employee fitness tax credit against corporate income tax.

This section provides that a taxpayer is eligible for a credit against their corporate income tax in an amount equal to 10 percent of the taxpayer's expenditures during the taxable year for:

- 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, including, but not limited to, a gymnasium, weight training room, aerobics workout space, swimming pool, running track, or any indoor or outdoor court, field, or other site used for competitive sports events or games;
- The costs of equipping and providing any related financial support for an amateur athletic team that engages in vigorous athletic activity and is under the sponsorship of the taxpayer, either alone or jointly with one or more other employers, if the membership of the team consists entirely of employees of the taxpayer in this state or the taxpayer and another employer or employers with whom the taxpayer has joined to provide employee fitness equipment and financial support;
- The cost of subsidizing an employee's membership to a health studio as defined by s. 501.0125, F.S.; and
- Fifty percent of the cost of employing a qualified person to provide, on the taxpayer's business premises:
 - Information and guidance on subjects relating to personal and family health, such as nutrition, hygiene, and methods of preventing, recognizing, and combating substance abuse; or
 - Instruction in and opportunity for fitness enhancement activity, including, but not limited to, dance or other aerobic exercise, yoga, muscle stretching, and martial arts.

In order to be eligible for the tax credit, the benefit (as described above) must be extended equally to all full-time employees.

The total amount of tax credits authorized for a taxpayer may not exceed 50 percent of the taxpayer's corporate income tax liability for any taxable year. Further, the total amount of tax credits may not exceed \$50 multiplied by the average number of full time employees of the taxpayer. If the full amount of credit granted to a taxpayer is not used in any one year because of insufficient tax liability, the unused amount may be carried forward for up to five years.

This section also provides that two or more taxpayers may join together to establish and operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction. The participating taxpayers may apportion the annual employee fitness credits in any manner they consider appropriate, but a jointly operated facility

may not receive more than \$50 multiplied by the average number of full-time employees of the participating taxpayers.

This section also provides that a taxpayer, or two or more taxpayers acting jointly, may employ a not-for-profit or for-profit corporation to operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction.

A taxpayer that is eligible for an employee fitness tax credit under s. 220.192, F.S., is not eligible for an employee fitness tax credit under s. 624.5108, F.S., which is created in section 4 of this bill.

Employee fitness tax credits are not available to any professional sports franchise or facility or to any taxpayer whose primary business activity is operating a fitness facility or providing any services eligible for credits under this section.

This section requires DOR to adopt rules and forms necessary to administer the employee fitness tax credit. Verification of expenditures on facilities or personnel which promote employee fitness must be provided in writing to DOR. Applications for credit for payments made to construct or rehabilitate a facility for employee fitness must be submitted to DOR within 6 months after the local building inspector deems the construction or rehabilitation of the facility is substantially completed. Application for credit for eligible expenditures promoting employee fitness, as provided above, must be submitted to DOR with the tax return on which the credit is claimed. A business that files an amended return for any taxable year may not receive any amount of credit or credit carryforward in excess of the amount claimed by the business on its original return for the taxable year.

This section defines the following terms: amateur athletic team, qualified person, and vigorous athletic activity.

Finally, the employee fitness tax credit provisions are set to expire on December 31, 2016, except for the carryover provisions.

Section 2 amends s. 220.02(8), F.S., to require that the employee fitness tax credit is to be claimed after all other credits available under ch. 220, F.S., have been claimed.

Section 3 amends s. 220.13(1)(a), F.S., to require an addition of the amount claimed as an employee fitness tax credit, in computing adjusted federal income.

Section 4 creates s. 624.5108, F.S., providing for an employee fitness tax credit against the insurance premium tax.

An insurer is eligible for a credit against their insurance premium tax in an amount equal to 10 percent of the taxpayer's employee fitness costs during the taxable year, including: the cost of equipping and operating an employee fitness facility, the cost of sponsoring an amateur athletic team, and 50 percent of the cost of employing a qualified person to teach a fitness or health class. (See section 1 above for more detailed description of the employee fitness costs).

In order to be eligible for the tax credit, the employee fitness benefit must be extended equally to all full-time employees.

The total amount of tax credits authorized for a taxpayer may not exceed 50 percent of the taxpayer's insurance premium tax liability for any taxable year. Further, the total amount of tax credits may not exceed \$50 multiplied by the average number of full time employees of the taxpayer. If the full amount of credit granted to a taxpayer is not used in any one year because of insufficient tax liability, the unused amount may be carried forward for up to five years.

This section also provides that two or more taxpayers may join together to establish and operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction. The participating taxpayers may apportion the annual employee fitness credits in any manner they consider appropriate, but a jointly operated facility may not receive more than \$50 multiplied by the average number of full-time employees of the participating taxpayers.

This section also provides that a taxpayer, or two or more taxpayers acting jointly, may employ a not-for-profit or for-profit corporation to operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction.

This section authorizes DOR to adopt rules and forms necessary to administer the employee fitness tax credit. Verification of payment to a not-for-profit or for-profit corporation, a fitness facility, or a fitness instructor must be submitted in writing to DOR with the tax return on which the credit is being claimed.

This section also defines the following terms: amateur athletic team, department, employee fitness costs, qualified person, and vigorous athletic activity.

Finally, the employee fitness tax credit provisions are set to expire on December 31, 2016, except for the carryover provision.

Section 5 provides that this bill will take effect on January 1, 2007, and that the provisions of this bill will apply to tax years beginning on or after that date.

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:**

On February 10, 2006, the Revenue Estimating Conference estimated that this bill will result in a revenue loss of \$.3 million in fiscal year 2006-07, and a loss of \$.7 million in fiscal year 2007-08.

B. Private Sector Impact:

Businesses that promote employee fitness will benefit, as they will be eligible to receive the employee fitness tax credits.

C. Government Sector Impact:

DOR may incur administrative costs associated with the implementation of the employee fitness tax credit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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:

None.

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