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: Government Efficiency Appropriations Committee

BILL: CS/SB 1230

INTRODUCER: Commerce and Consumer Services Committee, and Senator Margolis

SUBJECT: Tax Credit Employee Fitness

DATE: April 14, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	**Fav/CS**
2.	Johnson	Deffenbaugh	BI	**Fav/2 amendments**
3.	Fournier	Johansen	GE	**Favorable**
4.			GA	
5.			WM	
6.				

Please see last section for Summary of Amendments

- [X] Technical amendments were recommended
- [X] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

This committee substitute provides for an employee fitness tax credit that may be applied against a taxpayer's corporate income tax liability, and in the case of an insurer, a tax credit may also be applied against the insurance premium tax liability. A taxpayer 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, the cost of subsidizing an employee's membership to a health studio, 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 an employer's corporate income tax or insurance premium tax due in any taxable year and cannot exceed $50 per employee. 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

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 in excess of $5,000. 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. The following types of businesses are exempt 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 Credit[1]- 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 Facility[2]- 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 Credit[3]- 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 Jobs[4]- 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.
- Scholarship-Funding Organization Credits[5] - a business may be eligible for a 100 percent credit for contributions to nonprofit scholarship-funding organizations.

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 the state of 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 Program[6] - 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.

[1] Section 220.191, F.S.
[2] Section 220.19, F.S.
[3] Section 220.183, F.S.
[4] Section 220.181, F.S.
[5] Section 220.187, F.S.
[6] Section 624.5105, F.S.

- Capital Company Investment Credit[7]- 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 Credit[8] - 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 Credit[9] - 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.

Taxpayer Incentives for Fitness
Currently, Florida has no tax incentive programs relating to fitness or employee fitness. Several states have proposed legislation in 2006 relating to tax incentives for employee fitness:

- Mississippi – proposed 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 equal to the 10 percent of the costs incurred to promote employee fitness or 50 percent of the business' tax liability, whichever is less.
- New York – proposed a tax credit of up to $1,000 to businesses with qualified expenses for work wellness.
- Wisconsin – proposed an income and franchise tax credit in an amount equal to the expenses incurred by a business to provide health or fitness programs.

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. In 2004, Florida enacted legislation that authorizes an insurer or health maintenance organization to provide for an appropriate rebate of premiums paid in the last year when the individual covered by such plan is enrolled in and maintains participation in any health wellness, maintenance, or improvement program approved by the health plan.[10]

III. Effect of Proposed Changes:

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

[7] Section 288.99, F.S.
[8] Section 220.191(2), F.S.
[9] Section 624.5107, F.S.
[10] Ch. 2004-297, L.O.F.

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 an employer may not exceed 50 percent of the employer'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 employers 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 on insurance premium taxes under s. 624.5108, F.S., which is created in section 4 of this bill for insurers. 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. The section provides that 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 can only 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 the inclusion of the amount claimed as an employee fitness tax credit, in computing adjusted federal income.

Section 4 creates s. 624.5108, F.S., to authorize an employee fitness tax credit against the insurance premium tax for insurers. 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 the 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 the 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 and provides that 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 April 14, 2006, the Revenue Estimating Conference estimated that this bill will result in a reduction of general revenue of $1.5 million in fiscal year 2006-07, and $2.9 million in fiscal year 2007-08 and thereafter.

B. Private Sector Impact:

Corporate taxpayers that promote employee fitness will be eligible to receive the employee fitness tax credits on corporate income tax or premium insurance tax. Employees participating in the program would benefit physically from such programs.

C. Government Sector Impact:

The DOR may incur indeterminate administrative costs associated with implementing and monitoring the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 362570 by Banking and Insurance:
The amendment revises the criteria for corporate income tax credit for expenditures relating to health studios by clarifying that such health studios must be located in Florida.

Barcode 185466 by Banking and Insurance:
The amendment authorizes a premium insurance tax credit for the cost of subsidizing an employee's membership to a health studio, as defined by s. 501.0125, F.S., and located in Florida.