# 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 Committee

BILL: CS/SB 194

INTRODUCER: Commerce Committee and Senator Margolis

SUBJECT: Tax Credits/Employee Fitness

DATE: February 21, 2007 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Pugh | Cooper | CM | **Fav/CS** |
| 2. | | | FT | |
| 3. | | | GA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:


CS/SB 194 creates an employee fitness tax credit that may be applied against a taxpayer's corporate income tax liability, and in the case of an insurer, 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 or organization" to provide instruction in fitness or health. "Qualified person" is defined and "qualified organization" is clarified to mean an organization that employs a qualified person.

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. Unused tax credits may be carried forward for 5 years. The provisions of this committee substitute are scheduled to expire December 31, 2017.

This committee substitute creates sections 220.1925 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 Florida Department of Revenue (DOR) is responsible for implementing the provisions of the state's 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.

Chapter S corporations, master limited partnerships, and limited liability companies are exempt from paying the state's corporate income tax. Several other types of businesses qualify for corporate income tax credit programs, including:

- Capital Investment Tax Credit[1]-- Any business that creates jobs and constructs a facility related to a target industry, a high-impact sector, or a new or expanded headquarters facility that locates in an enterprise zone and brownfield area, 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]-- Any 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 ranging from 20 percent to 45 percent of the wages of the new jobs' wages, depending on which criteria are met.
- Scholarship-Funding Organization Credits[5]-- Any 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 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:

[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.

- 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.
- 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 creates jobs and constructs a facility for a target industry, a high-impact sector, or a new or expanded headquarters facility that locates in an enterprise zone and brownfield area, 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**
The State of Florida offers no tax incentives relating to employee fitness. However in 2004, legislation was enacted to authorize an insurer or health maintenance organization to provide for a 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]

Mississippi, Hawaii, North Carolina, Wisconsin, and other states have in recent years proposed legislation that would have created tax incentives for businesses that encourage employee fitness. None have appeared to have become law. The New York State Assembly is considering a bill during its 2007 session that would create a tax credit of $100 per employee, or a total of $100,000 per business annually, for eligible expenses for occupational wellness. The criteria would be established by the New York Department of Health.

## III. Effect of Proposed Changes:

**Section 1** creates s. 220.1915, 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 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;

[6] Section 624.5105, F.S.
[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.

- 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 or organization 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 company must extend the benefits as described above to all its full-time employees equally. 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 the company's full-time employees. If the full amount of credit granted to a taxpayer is not used in any 1 year because of insufficient tax liability, the unused amount may be carried forward for up to 5 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 this corporate income employee fitness tax credit 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. 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 also requires DOR to adopt rules and forms necessary to administer the employee fitness tax credit. Other administrative requirements include:

- Verification of expenditures on facilities or personnel that 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 carry-forward 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.” It also clarifies that a “qualified organization” is one that employs a qualified person.

Finally, the section provides that the employee fitness tax credit provisions will expire December 31, 2017, except for the carryover provisions.

**Section 2** amends s. 220.02(8), F.S., to rank the proposed employee fitness tax credit last on the priority of tax credits to be claimed against the corporate income tax.

**Section 3** amends s. 220.13(1)(a), F.S., to require the inclusion of the amount claimed as an employee fitness tax credit, as proposed in this bill, 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 its 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, 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.

(This credit is identical in form to the corporate tax credit created in section 1 of the bill. See the discussion of section 1 for details.)

This section also provides that the employee fitness tax credit provisions will expire December 31, 2017, except for the carryover provision.

**Section 5** amends s. 624.509(7), F.S., to rank the proposed employee fitness tax credit on the priority of tax credits to be claimed against the insurance premium tax.

**Section 6** provides that this committee substitute will take effect on January 1, 2008, and that its provisions 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 9, 2007, the Revenue Impact Estimating Conference determined that this legislation could reduce general revenue by at least $2.8 million in fiscal year 2007-2008 because of the mid-year implementation date, and $6.7 million in fiscal year 2008-2009.

These numbers are based on DOR research indicating that an estimated 5,184 employers would participate in the fitness tax credit program, and an overall average of 12.27 percent of employees would take advantage of the fitness instruction or facilities provided.

### 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. Meanwhile, employees participating in the fitness programs likely would experience improvements in their health and physical conditioning.

### C. Government Sector Impact:

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

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Summary of Amendments:

None.