

By the Committee on Commerce; and Senator Oelrich

577-05715-08

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1 A bill to be entitled
2 An act relating to tax credits for research and
3 development; creating s. 220.194, F.S.; providing
4 legislative findings; creating the research and
5 development tax credit program; providing purposes for the
6 program; defining the terms "base amount," "business
7 enterprise," "qualified research expenses," "manufacturing
8 industry," "transportation and warehousing industry,"
9 "telecommunications industry," "tourism industry," "retail
10 industry," "research and development industry," and "base
11 period"; providing eligibility requirements for research
12 and development tax credits; providing limitations
13 regarding eligibility; providing an amount for such
14 credit; providing a maximum amount of credit that may be
15 taken during a single tax year; providing that any unused
16 credit may be carried forward for a specified period;
17 authorizing the sale or assignment of unused credit to
18 certain taxpayers under certain conditions; requiring that
19 a party to a sale or assignment file certain information
20 and documents with the department; requiring that parties
21 to a sale or assignment obtain the department's approval
22 before completing such sale or assignment; prohibiting the
23 department from unreasonable withholding such approval;
24 providing requirements for the use tax credits sold or
25 assigned; limiting the total amount of tax credits that
26 may be assigned in a calendar year; providing that
27 applications for credits may be filed on or after a
28 specified date; requiring that the credits be granted in
29 the order in which applications are received; authorizing

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30 the department to adopt rules; amending s. 220.02, F.S.;

31 revising legislative intent to include the research and

32 development tax credit in the ordered list according to

33 which credits against corporate income tax or franchise

34 tax are applied; providing an effective date.

35

36 Be It Enacted by the Legislature of the State of Florida:

37

38 Section 1. Section 220.194, Florida Statutes, is created to

39 read:

40 220.194 Research and development tax credit.--

41 (1) (a) The Legislature finds that research and development

42 has become the underlying source of wealth in the 21st century by

43 generating ideas and technologies that encourage productivity and

44 economic growth. Furthermore, companies generate the main body of

45 growth-stimulating innovations, making current ideas and

46 technologies more market-sensitive than other sources of research

47 and development.

48 (b) The Legislature further finds that research and

49 development tax credits provide incentives for corporate research

50 and development beyond expected levels. Research demonstrates

51 that the federal research and development tax credit is an

52 effective tool for stimulating additional research and

53 development, which in turn leads to faster economic growth, and

54 state research and development tax credit programs are nearly as

55 important to corporate research and development as the federal

56 research and development tax credit program. Also, the typical

57 state research and development tax credit program increases

58 general, company-funded research and development within a state,

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59 often enhancing the state's competitiveness by enabling it to
60 draw research and development activity away from other states.

61 (c) Additionally, the Legislature finds that this state
62 needs a state research and development tax credit program to
63 ensure economic competition. More than half of the states of this
64 nation have a research and development tax credit program.
65 Without a state research and development tax credit program,
66 Florida lags behind the rest of the nation in important corporate
67 research and development.

68 (d) There is created within the Department of Revenue the
69 research and development tax credit program for the purposes of
70 encouraging corporate research and development activity within
71 the state, sharpening the state's competitive edge by leveling
72 the playing field with the state's regional and national economic
73 competitors, supporting the state's vibrant innovation economy,
74 and attracting high-wage, professional research jobs to this
75 state.

76 (2) DEFINITIONS.--As used in this section, the term:

77 (a) "Base amount" means the amount resulting from the
78 following calculation:

79 1. The average of the business enterprise's qualified
80 research expenses in this state allowed under s. 41 of the
81 Internal Revenue Code for the 4 taxable years preceding the
82 taxable year for which the credit is being determined.

83 2. The qualified research expenses taken into account in
84 computing the base amount shall be determined on a basis
85 consistent with the determination of qualified research expenses
86 for the credit year.

87 (b) "Business enterprise" means any corporation, as defined

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88 in s. 220.03(1)(e), which is engaged in the manufacturing,
89 transportation and warehousing, telecommunications, tourism, or
90 research and development industries in this state, including
91 retail businesses.

92 (c) "Qualified research expenses" means research expenses
93 qualifying for the credit under s. 41 of the Internal Revenue
94 Code and allocated for in-house research expenses incurred in
95 this state or contract research expenses incurred in this state.
96 The term does not include research conducted outside this state,
97 research that is excluded under s. 41 of the Internal Revenue
98 Code, or research conducted by a business enterprise that is not
99 within its principal business activity.

100 (d) "Manufacturing industry" means corporations clearly
101 engaged in manufacture which, during all years of the base period
102 reports, list the principal business activity codes for
103 manufacturing on their federal income tax returns.

104 (e) "Transportation and warehousing industry" means
105 corporations clearly engaged in transportation or warehousing
106 business which, during all years of the base period reports, list
107 the principal business activity codes for transportation and
108 warehousing on their federal income tax returns.

109 (f) "Telecommunications industry" means corporations
110 clearly engaged in the telecommunications business which, during
111 all years of the base period reports, list the principal business
112 activity codes for telecommunications on their federal income tax
113 returns.

114 (g) "Tourism industry" means corporations clearly engaged
115 in the tourism business which, during all years of the base
116 period reports, list the principal business activity codes for

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117 arts, entertainment, and recreation or accommodations on their
118 federal income tax returns.

119 (h) "Retail industry" means corporations clearly engaged in
120 the retail business which, during all years of the base period
121 reports, list the principal business activity codes for retail
122 trade on their federal income tax returns.

123 (i) "Research and development industry" means a corporation
124 clearly engaged in the research and development business which,
125 during all years of the base period reports, list the principal
126 business activity codes for scientific research and development
127 services on their federal income tax returns.

128 (j) "Base period" means the 4 taxable years preceding the
129 taxable year for which the credit is being determined. If a
130 corporation has not been in existence for the entire base period,
131 then the credit shall be reduced by 25 percent for each of those
132 years unless the corporation establishes that its predecessor was
133 a corporation meeting the requirements of paragraph (b) during
134 that part of the base period.

135 (3) TAX CREDIT.--Subject to the limitations contained in
136 paragraph (e), a business enterprise is eligible for a credit
137 against the tax imposed by this chapter if such business
138 enterprise has qualified research expenses in this state in the
139 calendar year exceeding the base amount and, for the same
140 calendar year, claims and is allowed a research credit for such
141 qualified research expenses under s. 41 of the Internal Revenue
142 Code.

143 (a) The tax credit shall be 10 percent of the excess
144 qualified research expenses over the base amount.

145 (b) The credit taken in any single tax year may not exceed

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146 50 percent of the business enterprise's remaining net income tax
147 liability under this chapter after all other credits have been
148 applied under s. 220.02(8).

149 (c) Any unused credit authorized pursuant to this section
150 may be carried forward and claimed by the taxpayer for up to 5
151 years following the close of the taxable year in which the
152 qualified research expenses are incurred.

153 (d) Any unused credit authorized pursuant to this section
154 may be assigned or sold to another taxpayer, as defined in s.
155 220.03(1)(e), in this state which is otherwise qualified under
156 paragraph (2)(i), if a claim for the allowance has not been filed
157 within 1 calendar year following the date on which the department
158 approved the credit. The business enterprise and the purchaser or
159 assignee must file an application, waivers of confidentiality,
160 and affidavits to transfer the credit on a form provided by the
161 department and obtain the prior approval of the department for
162 such transfer. The department may not unreasonably withhold such
163 approval. The purchaser or assignee must use the tax credit in
164 the taxable year in which the purchase or assignment of the
165 credit is made. The transfer or purchase of any amount of the tax
166 credit may not be exchanged for less than 75 percent of the
167 credit's value.

168 (e) The combined total amount of tax credits that may be
169 granted and approved to all business enterprises under this
170 section during any calendar year is \$15 million. Applications may
171 be filed with the department on or after March 20 for qualified
172 research expenses incurred within the preceding calendar year,
173 and credits shall be granted in the order in which completed
174 applications are received.

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175 (4) RULES.--The department may adopt rules to administer
176 this section, including, but not limited to, rules prescribing
177 forms, application procedures and dates, and notification or
178 other procedures for the sale or assignment of a credit, and may
179 establish guidelines for making an affirmative showing of
180 qualification for a credit and any evidence needed to
181 substantiate a claim for credit under this section.

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

184 220.02 Legislative Intent.--

185 (8) It is the intent of the Legislature that credits
186 against either the corporate income tax or the franchise tax be
187 applied in the following order: those enumerated in s. 631.828,
188 those enumerated in s. 220.191, those enumerated in s. 220.181,
189 those enumerated in s. 220.183, those enumerated in s. 220.182,
190 those enumerated in s. 220.1895, those enumerated in s. 221.02,
191 those enumerated in s. 220.184, those enumerated in s. 220.186,
192 those enumerated in s. 220.1845, those enumerated in s. 220.19,
193 those enumerated in s. 220.185, those enumerated in s. 220.187,
194 those enumerated in s. 220.192, ~~and~~ those enumerated in s.
195 220.193, and those enumerated in s. 220.194.

196 Section 3. This act shall take effect July 1, 2008, and is
197 effective for tax years beginning on or after January 1, 2009.