



300860

CM.CM.04665

Proposed Committee Substitute by the Committee on Commerce

A bill to be entitled

An act relating to commercial launch zone tax incentives; creating s. 220.194, F.S.; establishing credits against the corporate income tax for certain taxpayers that operate or provide investments for a commercial spaceflight project; providing definitions for purposes of the tax credits; establishing eligibility requirements for the tax credits; allowing for the carryforward of tax credits under certain circumstances; providing application and certification requirements; requiring the Office of Tourism, Trade, and Economic Development to determine the eligibility of taxpayers; providing for the expiration and renewal of a taxpayer's eligibility for tax credits; providing for administration and auditing of tax credits by the Department of Revenue; requiring the return and deposit of tax credits under certain circumstances; requiring the office to consult with Space Florida and adopt rules for tax credit applications and certifications; authorizing the department to adopt rules for tax administration, claims and transfers of tax credits, auditing, and reporting; amending s. 14.2015, F.S.; revising the duties of the office to include administration of the tax credits created by the act; amending s. 213.053, F.S.; providing for sharing of confidential information; amending s. 220.02, F.S.; revising legislative intent relating to the order for applying tax credits; amending s. 220.13, F.S.; specifying that net operating losses taken or transferred as corporate income tax credits may not also be deducted from income; amends s. 220.16, F.S., adding the financial assistance obtained by the



300860

CM.CM.04665

29 sale of tax credits pursuant to s. 220.194, F.S., to the
30 category of nonbusiness income that must be reported; providing
31 an effective date.

32

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

34

35 Section 1. Section 220.194, Florida Statutes, is created to
36 read:

37 220.194 Corporate income tax credits for commercial
38 spaceflight projects in Florida's commercial launch zone.-

39 (1) The intent of this legislation is to create incentives
40 to attract commercial launch, payload, and other commercial
41 space business to the state of Florida.

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

43 (a) "Commercial launch zone" means an area within spaceport
44 territory, as defined in s. 331.303(18).

45 (b) "Certified commercial spaceflight business" means a
46 business that has been certified by OTTED; is registered with
47 the Secretary of State to do business in Florida; and is
48 currently undertaking in Florida, for nongovernmental purposes
49 only, the following activities that will eventually result in a
50 launch from a commercial launch zone: designing or manufacturing
51 a launch vehicle, reentry vehicle, or components thereof;
52 providing a launch service or reentry service; or providing the
53 payload for a launch vehicle or reentry vehicle. The business
54 may participate in more than one commercial spaceflight project
55 at a time. For the purposes of applying for the tax incentives
56 created in this act, a certified commercial spaceflight business
57 also must have:



300860

CM.CM.04665

58 1. Created, filled, and retained at least 35 net new jobs
59 associated with an individual spaceflight project within the 3
60 calendar years prior to claiming the credit;

61 2. Invested a total of at least \$15 million in an
62 individual spaceflight project during the 3 calendar years prior
63 to claiming the credit; and

64 3. Participated in a commercial spaceflight project that
65 resulted in a successful launch from a commercial launch zone
66 within the previous 3 years.

67 (c) "Commercial spaceflight project" means an activity
68 performed by a certified commercial spaceflight business related
69 to the launch or reentry of a launch vehicle or reentry vehicle
70 for launches from a commercial launch zone. The term includes a
71 launch service or reentry service, and any process that
72 validates hardware or components to meet design and workmanship
73 criteria for space launch vehicles per U.S. Department of
74 Defense and NASA guidelines.

75 (d) "Launch" means to place or attempt to place a launch
76 vehicle or reentry vehicle and any payload from Earth into a
77 suborbital trajectory, into Earth orbit in outer space, or
78 otherwise into outer space.

79 (e) "Launch service" means an activity related to the
80 preparation of a launch vehicle and any payload for launch and
81 the conduct of a launch.

82 (f) "New job" means a full-time equivalent position created
83 by a certified commercial spaceflight business on or after
84 January 1, 2010, to work on a commercial spaceflight project; is
85 not held by an owner, partner, or majority stockholder of the
86 business; is not an administrative, clerical, or janitorial



300860

CM.CM.04665

87 position; and is filled by an employee. The same job shall not
88 be counted more than once for the purposes of claiming
89 incentives created by this act.

90 (g) "Office" means the Governor's Office of Tourism, Trade
91 and Economic Development.

92 (h) "Outer space" means an altitude of at least 50 miles
93 above the Earth's surface.

94 (i) "Payload" means an object that a certified commercial
95 spaceflight business undertakes to place in outer space by means
96 of a launch vehicle or reentry vehicle, including components of
97 the vehicle specifically designed or adapted for the object.

98 (j) "Reentry" means to return or attempt to return a
99 reentry vehicle and any payload from Earth orbit, or from outer
100 space, to Earth.

101 (k) "Reentry service" means an activity related to the
102 preparation of a reentry vehicle and any payload for reentry and
103 conduct of the reentry.

104 (l) "Spaceport territory" has the same meaning as defined
105 in s. 331.303(18).

106 (m) "Space Vehicle" means any spacecraft, satellite, upper-
107 stage, or launch vehicle system.

108 (n) "Successful launch" means a launch that successfully
109 places a launch vehicle or reentry vehicle and any payload from
110 Earth into a suborbital trajectory, into Earth orbit in outer
111 space, or otherwise into outer space.

112 (o) "Taxpayer" has the same meaning as defined in s.
113 220.03.

114 (3) TAX CREDITS.—For any tax year beginning on or after
115 January 1, 2013, a certified commercial spaceflight business



300860

CM.CM.04665

116 providing or conducting commercial spaceflight projects may
117 select one of the following tax credits for which it is
118 certified:

119 (a) *Non-transferable Corporate Income Tax Credit.*—A credit
120 equal to 50 percent of the net tax imposed by this chapter shall
121 be granted to a certified commercial spaceflight business. Under
122 no circumstances shall the business claim this credit in any tax
123 year that exceeds its corporate income tax liability that same
124 tax year.

125 (b) *Transferable Net Operating Loss Tax Credit.*—The
126 certified commercial spaceflight business may convert its net
127 operating loss that has not otherwise been deducted from income
128 for Florida tax purposes to a transferable tax credit as
129 provided below.

130 1. In addition to meeting the requirements in
131 paragraph(3) (b), the business also must:

132 a. Have incurred net operating losses in any of the
133 previous 3 calendar years; and

134 b. Not be at least 50 percent owned or controlled, directly
135 or indirectly, by another corporation that has demonstrated
136 positive net income in any of the 3 previous years of ongoing
137 operations, or is not part of a consolidated group of affiliated
138 corporations, as filed for federal income tax purposes, which in
139 the aggregate demonstrated positive net income in any of the 3
140 previous years of ongoing operations.

141 2. The amount of the transferable tax credit is equal to:

142 a. One hundred percent of the net operating losses incurred
143 by a certified commercial spaceflight business during its first
144 full year of operations.



300860

CM.CM.04665

145 b. One hundred percent of the net operating losses incurred
146 by a certified commercial spaceflight business during its second
147 full year of operations.

148 c. One hundred percent of the net operating losses incurred
149 by a certified commercial spaceflight business during its third
150 full year of operations.

151 3. A certified commercial spaceflight business allowed a
152 tax credit under this paragraph may transfer all or part of a
153 transferable tax credit to any taxpayer that is subject to the
154 tax imposed by chapter 220. The transfer must be by written
155 agreement for consideration of no less than 75 percent of the
156 credit's face value. The transferee is entitled to apply the
157 credit to the taxes owed under this chapter, and may carry
158 forward an unused credit up to 5 years. Under no circumstances
159 shall the transferee claim a credit in any tax year that exceeds
160 the corporate income taxes it owes that same tax year.

161 (c) *Jobs tax credit.*—A credit against the tax imposed by
162 this chapter shall be granted to a certified commercial
163 spaceflight business, in an amount equal to 10 percent of the
164 annual wages subject to unemployment tax paid by the commercial
165 spaceflight business to each employee in a new job, not to
166 exceed \$7,500 per employee. The credits may be applied up to the
167 amount of chapter 220 taxes owed under this chapter for the tax
168 year in which they are claimed. Unused credits may be carried
169 forward for up to 5 years.

170 (d) *Machinery and equipment credit.*—A credit against the
171 tax imposed by this chapter shall be granted to a certified
172 commercial spaceflight business that invests a cumulative total
173 of at least \$500,000 in machinery and equipment that is used for



300860

CM.CM.04665

174 a commercial spaceflight project. An investment in machinery and
175 equipment may be claimed once. The amount of the credit is equal
176 to 7.5 percent of the investment of machinery and equipment. The
177 taxpayer may only claim a credit not exceeding 50 percent of the
178 taxpayer's tax liability in the year in which it is claimed. If
179 credit granted under this paragraph is not fully used in any one
180 tax year because of insufficient tax liability, the unused
181 amount may be carried forward for up to 5 years.

182 (e) Unless transferred as provided in paragraph (3) (b),
183 credits awarded under this section may be granted only against
184 the corporate income tax liability generated by or arising out
185 of a commercial spaceflight project, as documented in the
186 business's annual audit prepared by a certified public
187 accountant licensed to do business in Florida and verified by
188 the office.

189 (f) Certified spaceflight businesses shall not file
190 consolidated returns for the purposes of claiming the tax
191 incentives described paragraphs (3) (a)-(d).

192 (g) It is the responsibility of the certified commercial
193 spaceflight business or transferee to demonstrate to the
194 office's and the department's satisfaction that it is eligible
195 for credit under this section.

196 (4) APPLICATION AND CERTIFICATION.—To claim tax credits
197 under this section, a commercial spaceflight business must
198 submit a certification application to Space Florida for review.
199 The application must include the following information, along
200 with a \$250 non-refundable fee:

201 (a) The name and physical Florida address of the taxpayer;

202 (b) Documentation that the taxpayer is a commercial



300860

CM.CM.04665

203 spaceflight business;

204 (c) Documentation of the business's current commercial
205 spaceflight project and any other information it will need to
206 qualify for the tax credits, where applicable;

207 (d) The total amount and types of credits sought;

208 (e) The amount of transferable tax credits to be
209 transferred, if any; when the business expects to transfer them;
210 and the name and address of the recipient taxpayer or taxpayers;

211 (f) A copy of an audit or audits of the pertinent tax years
212 prepared by a certified public accountant licensed to practice
213 in Florida, that specifies, if applicable, that portion of the
214 business's activities related to commercial spaceflight
215 projects;

216 (g) An acknowledgement that it must file an annual report
217 on the project's progress with Space Florida and the office; and

218 (h) Any other information necessary to demonstrate that the
219 applicant meets the job creation, investment, and other
220 requirements of this section.

221
222 Within 60 days of receipt of the application, the executive
223 staff of Space Florida shall evaluate the application and
224 recommend it either for certification or denial by the office.

225 The executive director of the office has 30 days from receipt of
226 Space Florida's recommendation to approve or deny the
227 application. The office shall provide a letter of certification
228 to the applicant, if approved. If the office denies any part of
229 the application, it shall inform the applicant of the grounds
230 for the denial. A copy of the certification shall be submitted
231 to the department within 10 days of the executive director's



300860

CM.CM.04665

232 decision.

233 (5) COMMERCIAL SPACEFLIGHT BUSINESS; EXPIRATION OF
234 ELIGIBILITY FOR TAX CREDITS; RENEWAL.—Eligibility of a certified
235 commercial spaceflight business for credits under this section
236 shall expire 10 years after the executive director of the office
237 certifies that the commercial spaceflight business is eligible
238 for the credit program, or 10 years after the business' last
239 successful launch of its commercial spaceflight project,
240 whichever occurs later. A certified commercial spaceflight
241 business whose eligibility expires under this subsection may
242 renew its eligibility for another 10 years, upon a successful
243 launch that results from its commercial spaceflight project.

244 (6) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

245 (a) In addition to its existing audit and investigative
246 authority, the department may perform any additional financial
247 and technical audits and investigations, including examining the
248 accounts, books, and financial records of the tax credit
249 applicant, that are necessary to verify the eligible costs
250 included in the tax credit return and to ensure compliance with
251 this section. The office shall provide technical assistance when
252 requested by the department on any technical audits or
253 examinations performed under this subsection.

254 (b) It is grounds for forfeiture of previously claimed and
255 received tax credits if the department determines, as a result
256 of either an audit or examination, or from information received
257 from the office, that a certified commercial spaceflight
258 business, or in the case of transferred tax credits a taxpayer,
259 received tax credits under this section to which the certified
260 commercial spaceflight business or taxpayer was not entitled.



300860

CM.CM.04665

261 The certified commercial spaceflight business or taxpayer is
262 responsible for returning forfeited tax credits to the
263 department, and any returned funds shall be deposited in the
264 state's General Revenue Fund.

265 (c) The certified commercial spaceflight business must
266 repay the credit amount claimed or transferred if its net
267 operating loss is adjusted by amendment or as a result of any
268 other recomputation or redetermination of federal or Florida
269 taxable income or loss. The certified commercial spaceflight
270 business also is liable for a penalty equal to the amount of the
271 credit claimed or transferred, reduced in proportion to the
272 amount of the net operating loss certified for transfer over the
273 amount of the certified net operating loss disallowed. The
274 applicant and its successors shall maintain all records
275 necessary to support the reported net operating loss.

276 (d) The office may revoke or modify any written decision
277 granting eligibility for tax credits under this section if it is
278 discovered that the certified commercial spaceflight business
279 submitted any false statement, representation, or certification
280 in any application, record, report, plan, or other document
281 filed in an attempt to receive tax credits under this section.
282 The office shall immediately notify the department of any
283 revoked or modified orders affecting previously granted tax
284 credits. Additionally, the certified commercial spaceflight
285 business must notify the department of any change in its tax
286 credit claimed.

287 (e) The certified commercial spaceflight business shall
288 file with the department an amended return or other report as
289 the department prescribes by rule and shall pay any required tax



300860

CM.CM.04665

290 and interest within 60 days after the certified commercial
291 spaceflight business receives notification from the office that
292 previously approved tax credits have been revoked or modified.
293 If the revocation or modification order is contested, the
294 certified commercial spaceflight business shall file an amended
295 return or other report as provided in this paragraph within 60
296 days after a final order is issued following proceedings.

297 (f) The department may assess additional tax, penalty, and
298 interest as permitted by s. 95.091.

299 (7) RULES.—

300 (a) The office, in consultation with Space Florida, shall
301 adopt rules under ss. 120.536(1) and 120.54 to administer this
302 section, including rules relating to the certification forms for
303 commercial spaceflight businesses to complete, and the
304 application and certification procedures, guidelines, and
305 requirements necessary to administer this section.

306 (b) The department may adopt rules under ss. 120.536(1) and
307 120.54 to administer this section, including rules relating to:

308 1. The forms required to claim a tax credit under this
309 section, the requirements and basis for establishing an
310 entitlement to a credit, and the examination and audit
311 procedures required to administer this section.

312 2. The implementation and administration of the provisions
313 allowing a transfer of a net operating loss as a tax credit,
314 including rules prescribing forms, reporting requirements, and
315 specific procedures, guidelines, and requirements necessary to
316 perform the transfer.

317 3. The minimum portion of the credit that is available for
318 transfer.



300860

CM.CM.04665

319 (8) ANNUAL REPORT.—The office, in cooperation with Space
320 Florida and the department, shall submit an annual report of the
321 commercial launch zone incentive program's activities to the
322 Governor, the President of the Senate, and the Speaker of the
323 House of Representatives by November 30 of each year, beginning
324 in 2013.

325 Section 2. Paragraph (f) of subsection (2) of section
326 14.2015, Florida Statutes, is amended to read:

327 14.2015 Office of Tourism, Trade, and Economic Development;
328 creation; powers and duties.—

329 (2) The purpose of the Office of Tourism, Trade, and
330 Economic Development is to assist the Governor in working with
331 the Legislature, state agencies, business leaders, and economic
332 development professionals to formulate and implement coherent
333 and consistent policies and strategies designed to provide
334 economic opportunities for all Floridians. To accomplish such
335 purposes, the Office of Tourism, Trade, and Economic Development
336 shall:

337 (f)1. Administer the Florida Enterprise Zone Act under ss.
338 290.001-290.016, the community contribution tax credit program
339 under ss. 220.183 and 624.5105, the tax refund program for
340 qualified target industry businesses under s. 288.106, the tax-
341 refund program for qualified defense contractors and space
342 flight business contractors under s. 288.1045, contracts for
343 transportation projects under s. 288.063, the sports franchise
344 facility program under s. 288.1162, the professional golf hall
345 of fame facility program under s. 288.1168, the expedited
346 permitting process under s. 403.973, the Rural Community
347 Development Revolving Loan Fund under s. 288.065, the Regional



300860

CM.CM.04665

348 Rural Development Grants Program under s. 288.018, the Certified
349 Capital Company Act under s. 288.99, the Florida State Rural
350 Development Council, the Rural Economic Development Initiative,
351 the corporate income tax credits for commercial spaceflight
352 projects under s. 220.194, and other programs that are
353 specifically assigned to the office by law, by the
354 appropriations process, or by the Governor. Notwithstanding any
355 other provisions of law, the office may expend interest earned
356 from the investment of program funds deposited in the Grants and
357 Donations Trust Fund to contract for the administration of the
358 programs, or portions of the programs, enumerated in this
359 paragraph or assigned to the office by law, by the
360 appropriations process, or by the Governor. Such expenditures
361 shall be subject to review under chapter 216.

362 2. The office may enter into contracts in connection with
363 the fulfillment of its duties concerning the Florida First
364 Business Bond Pool under chapter 159, tax incentives under
365 chapters 212 and 220, tax incentives under the Certified Capital
366 Company Act in chapter 288, foreign offices under chapter 288,
367 the Enterprise Zone program under chapter 290, the Seaport
368 Employment Training program under chapter 311, the Florida
369 Professional Sports Team License Plates under chapter 320,
370 Spaceport Florida under chapter 331, Expedited Permitting under
371 chapter 403, and in carrying out other functions that are
372 specifically assigned to the office by law, by the
373 appropriations process, or by the Governor.

374 Section 3. Paragraph (z) is added to subsection (8) of
375 section 213.053, Florida Statutes, to read:

376 213.053 Confidentiality and information sharing.-



300860

CM.CM.04665

377 (8) Notwithstanding any other provision of this section,
378 the department may provide:

379 (z) Information relative to tax credits taken under
380 s.220.194 to the Office of Tourism, Trade, and Economic
381 Development or to Space Florida.

382
383 Disclosure of information under this subsection shall be
384 pursuant to a written agreement between the executive director
385 and the agency. Such agencies, governmental or nongovernmental,
386 shall be bound by the same requirements of confidentiality as
387 the Department of Revenue. Breach of confidentiality is a
388 misdemeanor of the first degree, punishable as provided by s.
389 775.082 or s. 775.083.

390 Section 4. Subsection (8) of section 220.02, Florida
391 Statutes, is amended to read:

392 220.02 Legislative intent.—

393 (8) It is the intent of the Legislature that credits
394 against either the corporate income tax or the franchise tax be
395 applied in the following order: those enumerated in s. 631.828,
396 those enumerated in s. 220.191, those enumerated in s. 220.181,
397 those enumerated in s. 220.183, those enumerated in s. 220.182,
398 those enumerated in s. 220.1895, those enumerated in s. 221.02,
399 those enumerated in s. 220.184, those enumerated in s. 220.186,
400 those enumerated in s. 220.1845, those enumerated in s. 220.19,
401 those enumerated in s. 220.185, those enumerated in s. 220.187,
402 those enumerated in s. 220.192, ~~and~~ those enumerated in s.
403 220.193, and those enumerated in s. 220.194.

404 Section 5. Paragraph (b) of subsection (1) of section
405 220.13, Florida Statutes, is amended to read:



300860

CM.CM.04665

406 220.13 "Adjusted federal income" defined.-

407 (1) The term "adjusted federal income" means an amount
408 equal to the taxpayer's taxable income as defined in subsection
409 (2), or such taxable income of more than one taxpayer as
410 provided in s. 220.131, for the taxable year, adjusted as
411 follows:

412 (a) *Additions*.- There shall be added to such taxable
413 income:

414 16. The amount taken as a credit for the taxable year under
415 s. 220.194.

416 (b) *Subtractions*.-

417 1. There shall be subtracted from such taxable income:

418 a. The net operating loss deduction allowable for federal
419 income tax purposes under s. 172 of the Internal Revenue Code
420 for the taxable year,

421 b. The net capital loss allowable for federal income tax
422 purposes under s. 1212 of the Internal Revenue Code for the
423 taxable year, except that any net operating loss taken as a
424 credit to corporate income taxes owed or that is transferred,
425 pursuant to s. 220.194(2)(b), may not be deducted by the seller.

426 c. The excess charitable contribution deduction allowable
427 for federal income tax purposes under s. 170(d)(2) of the
428 Internal Revenue Code for the taxable year, and

429 d. The excess contributions deductions allowable for
430 federal income tax purposes under s. 404 of the Internal Revenue
431 Code for the taxable year.

432

433 However, a net operating loss and a capital loss shall
434 never be carried back as a deduction to a prior taxable year,



300860

CM.CM.04665

435 but all deductions attributable to such losses shall be deemed
436 net operating loss carryovers and capital loss carryovers,
437 respectively, and treated in the same manner, to the same
438 extent, and for the same time periods as are prescribed for such
439 carryovers in ss. 172 and 1212, respectively, of the Internal
440 Revenue Code.

441 2. There shall be subtracted from such taxable income any
442 amount to the extent included therein the following:

443 a. Dividends treated as received from sources without the
444 United States, as determined under s. 862 of the Internal
445 Revenue Code.

446 b. All amounts included in taxable income under s. 78 or s.
447 951 of the Internal Revenue Code.

448
449 However, as to any amount subtracted under this
450 subparagraph, there shall be added to such taxable income all
451 expenses deducted on the taxpayer's return for the taxable year
452 which are attributable, directly or indirectly, to such
453 subtracted amount. Further, no amount shall be subtracted with
454 respect to dividends paid or deemed paid by a Domestic
455 International Sales Corporation.

456 3. In computing "adjusted federal income" for taxable years
457 beginning after December 31, 1976, there shall be allowed as a
458 deduction the amount of wages and salaries paid or incurred
459 within this state for the taxable year for which no deduction is
460 allowed pursuant to s. 280C(a) of the Internal Revenue Code
461 (relating to credit for employment of certain new employees).

462 4. There shall be subtracted from such taxable income any
463 amount of nonbusiness income included therein, including



300860

CM.CM.04665

464 payments received for a tax credit pursuant to s. 220.194(3)(b).

465 5. There shall be subtracted any amount of taxes of foreign
466 countries allowable as credits for taxable years beginning on or
467 after September 1, 1985, under s. 901 of the Internal Revenue
468 Code to any corporation which derived less than 20 percent of
469 its gross income or loss for its taxable year ended in 1984 from
470 sources within the United States, as described in s.

471 861(a)(2)(A) of the Internal Revenue Code, not including credits
472 allowed under ss. 902 and 960 of the Internal Revenue Code,
473 withholding taxes on dividends within the meaning of sub-
474 subparagraph 2.a., and withholding taxes on royalties, interest,
475 technical service fees, and capital gains.

476 6. Notwithstanding any other provision of this code, except
477 with respect to amounts subtracted pursuant to subparagraphs 1.
478 and 3., any increment of any apportionment factor which is
479 directly related to an increment of gross receipts or income
480 which is deducted, subtracted, or otherwise excluded in
481 determining adjusted federal income shall be excluded from both
482 the numerator and denominator of such apportionment factor.
483 Further, all valuations made for apportionment factor purposes
484 shall be made on a basis consistent with the taxpayer's method
485 of accounting for federal income tax purposes.

486 Section 6. Subsection (5) is added to section
487 220.16, Florida Statutes, to read:

488 220.16 Allocation of nonbusiness income.—Nonbusiness income
489 shall be allocated as follows:

490 (5) The amount of payments received in exchange for
491 transferring a net operating loss as authorized by s. 220.194 is
492 allocable to this state.



300860

CM.CM.04665

493 Section 7. This act shall take effect January 1, 2010, and
494 credits created herein may be claimed in the tax year beginning
495 on or after January 1, 2013.
496