

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

29 requiring that the credits be granted in the order in
 30 which applications are received; authorizing the
 31 department to adopt rules; amending s. 220.02, F.S.;

32 revising legislative intent to include the research and
 33 development tax credit in the ordered list according to
 34 which credits against corporate income tax or franchise
 35 tax are applied; providing an effective date.

36

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

38

39 Section 1. Section 220.194, Florida Statutes, is created
 40 to read:

41 220.194 Research and development tax credit program.--

42 (1) FINDINGS; CREATION.--

43 (a)1. The Legislature finds that research and development
 44 has become the underlying source of wealth in the 21st century
 45 by generating ideas and technologies that encourage productivity
 46 and economic growth. Furthermore, companies generate the main
 47 body of growth-stimulating innovations, making current ideas and
 48 technologies more market-sensitive than other sources of
 49 research and development.

50 2. The Legislature further finds that research and
 51 development tax credits provide incentives for corporate
 52 research and development beyond expected levels. Research
 53 demonstrates that the federal research and development tax
 54 credit is an effective tool for stimulating additional research
 55 and development, which in turn leads to faster economic growth,
 56 and state research and development tax credit programs are

HB 577

2009

57 nearly as important to corporate research and development as the
58 federal research and development tax credit program. Also, the
59 typical state research and development tax credit program
60 increases general, company-funded research and development
61 within a state, often enhancing the state's competitiveness by
62 enabling it to draw research and development activity away from
63 other states.

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

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

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

80 (a) "Base amount" means the amount resulting from the
81 following calculation:

82 1. The average of the business enterprise's qualified
83 research expenses in this state allowed under s. 41 of the
84 Internal Revenue Code for the 4 taxable years preceding the

85 taxable year for which the credit is being determined.

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

90 (b) "Business enterprise" means any corporation, as
91 defined in s. 220.03(1)(e), which is engaged in the
92 manufacturing, transportation and warehousing,
93 telecommunications, tourism, or research and development
94 industries in this state, including retail businesses.

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

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

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

112 (f) "Telecommunications industry" means corporations

HB 577

2009

113 clearly engaged in the telecommunications business which, during
114 all years of the base period reports, list the principal
115 business activity codes for telecommunications on their federal
116 income tax returns.

117 (g) "Tourism industry" means corporations clearly engaged
118 in the tourism business which, during all years of the base
119 period reports, list the principal business activity codes for
120 arts, entertainment, and recreation or accommodations on their
121 federal income tax returns.

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

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

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

139 (3) TAX CREDIT.--Subject to the limitations contained in
140 paragraph (e), a business enterprise is eligible for a credit

141 against the tax imposed by this chapter if such business
142 enterprise has qualified research expenses in this state in the
143 calendar year exceeding the base amount and, for the same
144 calendar year, claims and is allowed a research credit for such
145 qualified research expenses under s. 41 of the Internal Revenue
146 Code.

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

149 (b) The credit taken in any single tax year may not exceed
150 50 percent of the business enterprise's remaining net income tax
151 liability under this chapter after all other credits have been
152 applied under s. 220.02(8).

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

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

HB 577

2009

169 purchase or assignment of the credit is made. The transfer or
170 purchase of any amount of the tax credit may not be exchanged
171 for less than 75 percent of the credit's value.

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

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

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

188 220.02 Legislative intent.--

189 (8) It is the intent of the Legislature that credits
190 against either the corporate income tax or the franchise tax be
191 applied in the following order: those enumerated in s. 631.828,
192 those enumerated in s. 220.191, those enumerated in s. 220.181,
193 those enumerated in s. 220.183, those enumerated in s. 220.182,
194 those enumerated in s. 220.1895, those enumerated in s. 221.02,
195 those enumerated in s. 220.184, those enumerated in s. 220.186,
196 those enumerated in s. 220.1845, those enumerated in s. 220.19,

HB 577

2009

197 those enumerated in s. 220.185, those enumerated in s. 220.187,
198 those enumerated in s. 220.192, ~~and~~ those enumerated in s.
199 220.193, and those enumerated in s. 220.194.

200 Section 3. This act shall take effect July 1, 2009, and is
201 effective for tax years beginning on or after January 1, 2010.