

By Senator Oelrich

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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 intent; providing definitions; authorizing
5 certain businesses that incur certain research and
6 development expenses in this state to receive a tax
7 credit against the corporate income tax; specifying
8 the amount of the tax credit; limiting the use of the
9 credit; permitting the carryover of unused tax credits
10 for a specified period; permitting the sale or
11 assignment of unused tax credits, subject to the
12 approval of the Department of Revenue; limiting the
13 total amounts of credits that may be granted and
14 approved annually to a specified amount; requiring an
15 application to receive the credit; authorizing the
16 Department of Revenue to adopt rules; amending s.
17 220.02, F.S.; providing that the tax credit for
18 research and development is credited against the
19 corporate income tax after other specified credits
20 have been exhausted; providing an effective date.

21
22 WHEREAS, research and development has become the underlying
23 source of wealth in the 21st century by generating ideas and
24 technologies that encourage productivity and economic growth,
25 and

26 WHEREAS, corporations generate the main body of growth-
27 stimulating innovations, and

28 WHEREAS, research and development tax credits provide
29 incentives for corporate research and development beyond

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30 expected levels, and

31 WHEREAS, research shows that the federal research and
32 development tax credit is an effective tool for stimulating
33 additional research and development, which in turn leads to
34 faster economic growth, and

35 WHEREAS, state research and development tax credit programs
36 are nearly as important to corporate research and development as
37 the federal research and development tax credit program, and

38 WHEREAS, the typical state research and development tax
39 credit program increases general, company-funded research and
40 development within a state, often enhancing the state's
41 competitiveness by enabling a state to draw research and
42 development activity away from other states, and

43 WHEREAS, this state needs a state research and development
44 tax credit program to ensure economic competition, and

45 WHEREAS, more than half of the states of this nation have a
46 research and development tax credit program, and

47 WHEREAS, Florida lags behind the rest of the nation in
48 important corporate research and development activities because
49 the state does not have a research and development tax credit,
50 and

51 WHEREAS, the Legislature must create a research and
52 development tax credit in order to encourage corporate research
53 and development activity within this state, level the playing
54 field with the state's regional and national economic
55 competitors, support the state's vibrant innovation economy, and
56 attract high-wage, professional research jobs to this state,
57 NOW, THEREFORE,

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

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61 Section 1. Section 220.194, Florida Statutes, is created to
62 read:

63 220.194 Research and development tax credit.—

64 (1) DEFINITIONS.—As used in this section, the term:

65 (a) "Base amount" means the average of the business
66 enterprise's qualified research expenses in this state allowed
67 under 26 U.S.C. s. 41 for the 4 taxable years preceding the
68 taxable year for which the credit is being determined. The
69 qualified research expenses taken into account in computing the
70 base amount must be determined on a basis consistent with the
71 determination of qualified research expenses for the credit
72 year.

73 (b) "Base period" means the 4 taxable years preceding the
74 taxable year for which the credit is being determined.

75 (c) "Business enterprise" means any corporation, as defined
76 in s. 220.03(1)(e), which is engaged in the manufacturing,
77 transportation and warehousing, telecommunications, tourism, or
78 research and development industries in this state, including
79 retail businesses.

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

84 (e) "Qualified research expenses" means research expenses
85 qualifying for the credit under 26 U.S.C. s. 41 for in-house
86 research expenses incurred in this state or contract research
87 expenses incurred in this state. The term does not include

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88 research conducted outside this state, research that is excluded
89 under 26 U.S.C. s. 41, or research conducted by a business
90 enterprise which is not within its principal business activity.

91 (f) "Research and development industry" means corporations
92 clearly engaged in the research and development business which,
93 during all years of the base period reports, list the principal
94 business activity codes for scientific research and development
95 services on their federal income tax returns.

96 (g) "Retail industry" means corporations clearly engaged in
97 the retail business which, during all years of the base period
98 reports, list the principal business activity codes for retail
99 trade on their federal income tax returns.

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

105 (i) "Tourism industry" means corporations clearly engaged
106 in the tourism business which, during all years of the base
107 period reports, list the principal business activity codes for
108 arts, entertainment, and recreation or accommodations on their
109 federal income tax returns.

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

116 (2) TAX CREDIT.—Subject to the limitations contained in

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117 paragraph (e), a business enterprise is eligible for a credit
118 against the tax imposed by this chapter if such business
119 enterprise has qualified research expenses in this state in the
120 calendar year exceeding the base amount and, for the same
121 calendar year, claims and is allowed a research credit for such
122 qualified research expenses under 26 U.S.C. s. 41.

123 (a) The tax credit shall be 10 percent of the excess
124 qualified research expenses over the base amount. However, the
125 maximum tax credit for a business enterprise, including any
126 predecessor corporation that was a business enterprise, which
127 has not been in existence for the entire base period, is reduced
128 by 25 percent for each taxable year for which the corporation
129 did not exist during the base period.

130 (b) The credit taken in any single tax year may not exceed
131 50 percent of the business enterprise's remaining net income tax
132 liability under this chapter after all other credits have been
133 applied under s. 220.02(8).

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

138 (d) Any unused credit authorized under this section may be
139 assigned or sold to another business enterprise, if a claim for
140 the allowance has not been filed within 1 calendar year
141 following the date on which the department approved the credit.
142 The business enterprise selling the tax credit and the purchaser
143 or assignee must file an application, waivers of
144 confidentiality, and affidavits to transfer the credit on a form
145 provided by the department and obtain the prior approval of the

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146 department for the transfer. The department may not unreasonably
147 withhold such approval. The purchaser or assignee must use the
148 tax credit in the taxable year in which the purchase or
149 assignment of the credit is made. The transfer or purchase of
150 any amount of the tax credit may not be exchanged for less than
151 75 percent of the credit's value.

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

159 (3) RULES.—The department may adopt rules to administer
160 this section, including, but not limited to, rules prescribing
161 forms, application procedures and dates, and notification or
162 other procedures for the sale or assignment of a credit. The
163 department may establish guidelines for making an affirmative
164 showing of qualification for a credit and any evidence needed to
165 substantiate a claim for credit under this section.

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

168 220.02 Legislative intent.—

169 (8) It is the intent of the Legislature that credits
170 against either the corporate income tax or the franchise tax be
171 applied in the following order: those enumerated in s. 631.828,
172 those enumerated in s. 220.191, those enumerated in s. 220.181,
173 those enumerated in s. 220.183, those enumerated in s. 220.182,
174 those enumerated in s. 220.1895, those enumerated in s. 221.02,

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175 those enumerated in s. 220.184, those enumerated in s. 220.186,
176 those enumerated in s. 220.1845, those enumerated in s. 220.19,
177 those enumerated in s. 220.185, those enumerated in s. 220.187,
178 those enumerated in s. 220.192, ~~and~~ those enumerated in s.
179 220.193, and those enumerated in s. 220.194.

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