

HB 13A

2009

1 A bill to be entitled  
2 An act relating to the corporate income tax; providing  
3 legislative findings and intent; amending s. 220.03, F.S.;  
4 revising definitions; providing additional definitions;  
5 amending s. 220.13, F.S.; revising the definition of the  
6 term "adjusted federal income"; prohibiting certain  
7 deductibles for certain water's edge group members;  
8 providing an additional subtraction from adjusted federal  
9 income; creating s. 220.136, F.S.; defining the term  
10 "water's edge group reporting method"; requiring water's  
11 edge group members to use a certain group income reporting  
12 method; providing methodology requirements; providing  
13 return filing requirements; requiring domestic disclosure  
14 spreadsheet filing requirements; providing a definition;  
15 authorizing the Department of Revenue to adopt rules and  
16 forms; amending ss. 220.14, 220.15, 220.183, 220.1845,  
17 220.187, 220.19, 220.191, 220.192, 220.193, 220.51, and  
18 220.64, F.S.; replacing or deleting provisions relating to  
19 consolidated returns for affiliated groups to conform to  
20 water's edge group requirements; amending s. 376.30781,  
21 F.S.; conforming cross-references; providing for  
22 transitional rules; repealing s. 220.131, F.S., relating  
23 to consolidated returns for affiliated groups; providing  
24 appropriations; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

28           Section 1. Legislative finding; intent.--The Legislature  
 29 finds that a separate accounting system for corporations is  
 30 sometimes inadequate to accurately measure the income of  
 31 multinational and multistate corporations doing business in this  
 32 state and this may create tax disadvantages for corporations in  
 33 this state in competition with those multinational and  
 34 multistate corporations. Corporate business is increasingly  
 35 conducted through groups of commonly owned corporations, it is  
 36 the intent of the Legislature to adopt a combined system of  
 37 income tax reporting for corporations to more accurately measure  
 38 the business activities of corporations.

39           Section 2. Paragraphs (y) and (z) of subsection (1) of  
 40 section 220.03, Florida Statutes, are amended, and paragraphs  
 41 (gg) and (hh) are added to that subsection, to read:

42           220.03 Definitions.--

43           (1) SPECIFIC TERMS.--When used in this code, and when not  
 44 otherwise distinctly expressed or manifestly incompatible with  
 45 the intent thereof, the following terms shall have the following  
 46 meanings:

47           (y) "Taxable year" or "tax year" means the calendar or  
 48 fiscal year upon the basis of which net income is computed under  
 49 this code, including, in the case of a return made for a  
 50 fractional part of a year, the period for which such return is  
 51 made.

52           (z) "Taxpayer" means any corporation subject to the tax  
 53 imposed by this code, and includes all corporations that are  
 54 members of a water's edge group ~~for which a consolidated return~~  
 55 ~~is filed under s. 220.131.~~ However, "taxpayer" does not include

56 a corporation having no individuals (including individuals  
57 employed by an affiliate) receiving compensation in this state  
58 as defined in s. 220.15 when the only property owned or leased  
59 by said corporation (including an affiliate) in this state is  
60 located at the premises of a printer with which it has  
61 contracted for printing, if such property consists of the final  
62 printed product, property which becomes a part of the final  
63 printed product, or property from which the printed product is  
64 produced.

65 (gg) "Tax haven" means a jurisdiction that, for a  
66 particular tax year in question, is identified by the  
67 Organization for Economic Co-operation and Development as a tax  
68 haven or as having a harmful preferential tax regime or a  
69 jurisdiction that has no, or a nominal, effective tax on  
70 relevant income and:

71 1. Has laws or practices that prevent effective exchange  
72 of information for tax purposes with other governments regarding  
73 taxpayers subject to, or benefiting from, the tax regime;

74 2. Lacks transparency. For purposes of this subparagraph,  
75 a tax regime lacks transparency if the details of legislative,  
76 legal, or administrative provisions are not open to public  
77 scrutiny and apparent, or are not consistently applied among  
78 similarly situated taxpayers;

79 3. Facilitates the establishment of foreign-owned entities  
80 without the need for a local substantive presence or prohibits  
81 these entities from having any commercial impact on the local  
82 economy;

83 4. Explicitly or implicitly excludes the jurisdiction's  
 84 resident taxpayers from taking advantage of the tax regime's  
 85 benefits or prohibits enterprises that benefit from the regime  
 86 from operating in the jurisdiction's domestic market; or

87 5. Has created a tax regime which is favorable for tax  
 88 avoidance, based upon an overall assessment of relevant factors,  
 89 including, but not limited to, whether the jurisdiction has a  
 90 significant untaxed offshore financial or other services sector  
 91 relative to its overall economy.

92  
 93 For purposes of this paragraph, the term "tax regime" means a  
 94 set or system of rules, laws, regulations, or practices by which  
 95 taxes are imposed on any person, corporation, or entity or on  
 96 any income, property, incident, indicia, or activity pursuant to  
 97 governmental authority.

98 (hh) "Water's edge group" means a group of corporations  
 99 related through common ownership the business activities of  
 100 which are integrated with, dependent upon, or contribute to a  
 101 flow of value among members of the group. When 50 percent or  
 102 more of the outstanding voting stock of a corporation is under  
 103 direct or indirect ownership or control of such a group, the  
 104 corporation shall be considered to be part of a water's edge  
 105 group. A corporation shall be considered unitary unless clearly  
 106 shown by the facts and circumstances of the individual case to  
 107 not be a member of a water's edge group. When direct or indirect  
 108 ownership or control is less than 50 percent of the outstanding  
 109 voting stock, all elements of the business activities shall be  
 110 considered in determining whether a corporation qualifies as a

111 member of a water's edge group. A water's edge group shall not  
 112 include the income of any corporation which conducts business  
 113 outside the United States if 80 percent or more of the  
 114 corporation's property and payroll, as determined by the  
 115 apportionment factors described in ss. 220.15 and 220.151, is  
 116 assignable to locations outside the United States. In  
 117 determining whether voting stock is owned indirectly, the  
 118 attribution rules of s. 318 of the Internal Revenue Code of  
 119 1986, as amended, shall be used. For purposes of this paragraph,  
 120 the term "United States" is restricted to the states of the  
 121 United States, the District of Columbia, and the Commonwealth of  
 122 Puerto Rico. All income of a water's edge group is presumed to  
 123 be apportionable business income. A taxpayer has the burden of  
 124 proof regarding the issue of whether or not a corporation is a  
 125 member of a water's edge group and whether or not such income is  
 126 apportionable business income.

127 Section 3. Subsection (1) and paragraph (f) of subsection  
 128 (2) of section 220.13, Florida Statutes, are amended to read:

129 220.13 "Adjusted federal income" defined.--

130 (1) The term "adjusted federal income" means an amount  
 131 equal to the taxpayer's taxable income as defined in subsection  
 132 (2), or such taxable income of more than one taxpayer as  
 133 provided in s. 220.136 ~~220.131~~, for the taxable year, adjusted  
 134 as follows:

135 (a) Additions.--There shall be added to such taxable  
 136 income:

137 1. The amount of any tax upon or measured by income,  
 138 excluding taxes based on gross receipts or revenues, paid or

139 accrued as a liability to the District of Columbia or any state  
 140 of the United States which is deductible from gross income in  
 141 the computation of taxable income for the taxable year.

142 2. The amount of interest which is excluded from taxable  
 143 income under s. 103(a) of the Internal Revenue Code or any other  
 144 federal law, less the associated expenses disallowed in the  
 145 computation of taxable income under s. 265 of the Internal  
 146 Revenue Code or any other law, excluding 60 percent of any  
 147 amounts included in alternative minimum taxable income, as  
 148 defined in s. 55(b)(2) of the Internal Revenue Code, if the  
 149 taxpayer pays tax under s. 220.11(3).

150 3. In the case of a regulated investment company or real  
 151 estate investment trust, an amount equal to the excess of the  
 152 net long-term capital gain for the taxable year over the amount  
 153 of the capital gain dividends attributable to the taxable year.

154 4. That portion of the wages or salaries paid or incurred  
 155 for the taxable year which is equal to the amount of the credit  
 156 allowable for the taxable year under s. 220.181. This  
 157 subparagraph shall expire on the date specified in s. 290.016  
 158 for the expiration of the Florida Enterprise Zone Act.

159 5. That portion of the ad valorem school taxes paid or  
 160 incurred for the taxable year which is equal to the amount of  
 161 the credit allowable for the taxable year under s. 220.182. This  
 162 subparagraph shall expire on the date specified in s. 290.016  
 163 for the expiration of the Florida Enterprise Zone Act.

164 6. The amount of emergency excise tax paid or accrued as a  
 165 liability to this state under chapter 221 which tax is

166 deductible from gross income in the computation of taxable  
 167 income for the taxable year.

168 7. That portion of assessments to fund a guaranty  
 169 association incurred for the taxable year which is equal to the  
 170 amount of the credit allowable for the taxable year.

171 8. In the case of a nonprofit corporation which holds a  
 172 pari-mutuel permit and which is exempt from federal income tax  
 173 as a farmers' cooperative, an amount equal to the excess of the  
 174 gross income attributable to the pari-mutuel operations over the  
 175 attributable expenses for the taxable year.

176 9. The amount taken as a credit for the taxable year under  
 177 s. 220.1895.

178 10. Up to nine percent of the eligible basis of any  
 179 designated project which is equal to the credit allowable for  
 180 the taxable year under s. 220.185.

181 11. The amount taken as a credit for the taxable year  
 182 under s. 220.187.

183 12. The amount taken as a credit for the taxable year  
 184 under s. 220.192.

185 13. The amount taken as a credit for the taxable year  
 186 under s. 220.193.

187 14. Any amount in excess of \$25,000 allowable as a  
 188 deduction for federal income tax purposes under s. 179 of the  
 189 Internal Revenue Code of 1986, as amended, for the taxable year.

190 15. Any amount allowable as a deduction for federal income  
 191 tax purposes under s. 167 or s. 168 of the Internal Revenue Code  
 192 of 1986, as amended, for the taxable year to the extent that

193 such amount includes bonus depreciation allowable as deduction  
 194 under s. 168(k).

195 (b) Subtractions.--

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

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

200 b. The net capital loss allowable for federal income tax  
 201 purposes under s. 1212 of the Internal Revenue Code for the  
 202 taxable year,

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

206 d. The excess contributions deductions allowable for  
 207 federal income tax purposes under s. 404 of the Internal Revenue  
 208 Code for the taxable year.

209  
 210 However, a net operating loss and a capital loss shall never be  
 211 carried back as a deduction to a prior taxable year, but all  
 212 deductions attributable to such losses shall be deemed net  
 213 operating loss carryovers and capital loss carryovers,  
 214 respectively, and treated in the same manner, to the same  
 215 extent, and for the same time periods as are prescribed for such  
 216 carryovers in ss. 172 and 1212, respectively, of the Internal  
 217 Revenue Code. A deductible may not be allowed for net operating  
 218 losses, net capital losses, or excess contribution deductions  
 219 under ss. 170(d)(2), 172, 1212, and 404 of the Internal Revenue



220 Code of 1986, as amended, for a member of a water's edge group  
 221 that is not a United States member.

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

224 a. Dividends treated as received from sources without the  
 225 United States, as determined under s. 862 of the Internal  
 226 Revenue Code.

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

229  
 230 However, as to any amount subtracted under this subparagraph,  
 231 there shall be added to such taxable income all expenses  
 232 deducted on the taxpayer's return for the taxable year which are  
 233 attributable, directly or indirectly, to such subtracted amount.  
 234 Further, no amount shall be subtracted with respect to dividends  
 235 paid or deemed paid by a Domestic International Sales  
 236 Corporation.

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

243 4. There shall be subtracted from such taxable income any  
 244 amount of nonbusiness income included therein.

245 5. There shall be subtracted any amount of taxes of  
 246 foreign countries allowable as credits for taxable years  
 247 beginning on or after September 1, 1985, under s. 901 of the

248 Internal Revenue Code to any corporation which derived less than  
 249 20 percent of its gross income or loss for its taxable year  
 250 ended in 1984 from sources within the United States, as  
 251 described in s. 861(a)(2)(A) of the Internal Revenue Code, not  
 252 including credits allowed under ss. 902 and 960 of the Internal  
 253 Revenue Code, withholding taxes on dividends within the meaning  
 254 of sub-subparagraph 2.a., and withholding taxes on royalties,  
 255 interest, technical service fees, and capital gains.

256 6. There shall be subtracted from such taxable income, to  
 257 the extent included in such taxable income, amounts received by  
 258 a member of a water's edge group that was a dividend paid by  
 259 another member of the same water's edge group.

260 ~~7.6.~~ Notwithstanding any other provision of this code,  
 261 except with respect to amounts subtracted pursuant to  
 262 subparagraphs 1. and 3., any increment of any apportionment  
 263 factor which is directly related to an increment of gross  
 264 receipts or income which is deducted, subtracted, or otherwise  
 265 excluded in determining adjusted federal income shall be  
 266 excluded from both the numerator and denominator of such  
 267 apportionment factor. Further, all valuations made for  
 268 apportionment factor purposes shall be made on a basis  
 269 consistent with the taxpayer's method of accounting for federal  
 270 income tax purposes.

271 (c) Installment sales occurring after October 19, 1980.--

272 1. In the case of any disposition made after October 19,  
 273 1980, the income from an installment sale shall be taken into  
 274 account for the purposes of this code in the same manner that

275 such income is taken into account for federal income tax  
 276 purposes.

277 2. Any taxpayer who regularly sells or otherwise disposes  
 278 of personal property on the installment plan and reports the  
 279 income therefrom on the installment method for federal income  
 280 tax purposes under s. 453(a) of the Internal Revenue Code shall  
 281 report such income in the same manner under this code.

282 (d) Nonallowable deductions.--A deduction for net  
 283 operating losses, net capital losses, or excess contributions  
 284 deductions under ss. 170(d)(2), 172, 1212, and 404 of the  
 285 Internal Revenue Code which has been allowed in a prior taxable  
 286 year for Florida tax purposes shall not be allowed for Florida  
 287 tax purposes, notwithstanding the fact that such deduction has  
 288 not been fully utilized for federal tax purposes.

289 (2) For purposes of this section, a taxpayer's taxable  
 290 income for the taxable year means taxable income as defined in  
 291 s. 63 of the Internal Revenue Code and properly reportable for  
 292 federal income tax purposes for the taxable year, but subject to  
 293 the limitations set forth in paragraph (1)(b) with respect to  
 294 the deductions provided by ss. 172 (relating to net operating  
 295 losses), 170(d)(2) (relating to excess charitable  
 296 contributions), 404(a)(1)(D) (relating to excess pension trust  
 297 contributions), 404(a)(3)(A) and (B) (to the extent relating to  
 298 excess stock bonus and profit-sharing trust contributions), and  
 299 1212 (relating to capital losses) of the Internal Revenue Code,  
 300 except that, subject to the same limitations, the term:

301 (f) "Taxable income," in the case of a corporation which  
 302 is a member of an affiliated group of corporations filing a

303 consolidated income tax return for the taxable year for federal  
 304 income tax purposes, means taxable income of such corporation  
 305 for federal income tax purposes as if such corporation had filed  
 306 a separate federal income tax return for the taxable year and  
 307 each preceding taxable year for which it was a member of an  
 308 affiliated group, ~~unless a consolidated return for the taxpayer~~  
 309 ~~and others is required or elected under s. 220.131;~~

310 Section 4. Section 220.136, Florida Statutes, is created  
 311 to read:

312 220.136 Water's edge groups; special reporting  
 313 requirements.--

314 (1) For purposes of this section, the term "water's edge  
 315 group reporting method" means the determination of taxable  
 316 business profits for a group of entities conducting a unitary  
 317 business by adding combined net income and the additions and  
 318 deductions provided in s. 220.13 for members of the group and  
 319 apportioning the results as provided in ss. 220.15 and 220.151.

320 (2) All members of a water's edge group shall use the  
 321 water's edge group reporting method. Under the water's edge  
 322 group reporting method:

323 (a) Adjusted federal income for purposes of s. 220.12  
 324 means the sum of adjusted federal income for all members of the  
 325 group determined for a concurrent taxable year.

326 (b) The denominators of the apportionment factors shall be  
 327 calculated for all members of the water's edge group combined.

328 (c) The statutory apportionment formula shall be used for  
 329 all members of the water's edge group, unless an alternate  
 330 method is determined to be more appropriate by the department.

331 (d) Intercompany sales transactions made between members  
332 of the water's edge group shall be eliminated in the computation  
333 of the sales factor pursuant to ss. 220.15 and 220.151. As used  
334 in this subsection, the term "sales" includes, but is not  
335 limited to, loans, payments for the use of intangibles,  
336 dividends, and management fees.

337 (e) Each taxpayer shall apportion adjusted federal income  
338 under s. 220.15 as a member of a water's edge group that files a  
339 water's edge group return under this section based upon the  
340 apportionment factors described in s. 220.15. For purposes of  
341 this subsection, each special industry member included in a  
342 water's edge group filing a water's edge group return under this  
343 section, which would otherwise be permitted to use a special  
344 method of apportionment under s. 220.151, shall construct the  
345 numerator of its sales, property, and payroll factors,  
346 respectively, by multiplying the denominator of each such factor  
347 by the premiums or revenue miles factor ratio otherwise  
348 applicable pursuant to s. 220.151 in the manner prescribed by  
349 the department by rule.

350 (f) For purposes of this subsection, each special industry  
351 member included in a water's edge group return, which member  
352 would otherwise be permitted to use a special method of  
353 apportionment under s. 220.151, shall construct the numerator of  
354 its sales, property, and payroll factors, respectively, by  
355 multiplying the denominator of each such factor by the premiums  
356 or revenue miles factor ratio otherwise applicable pursuant to  
357 s. 220.151 in the manner prescribed by the department by rule.

358 (g) The income attributable to the activities in this

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359 state of a corporation exempt from taxation because of Pub. L.  
360 No. 86-272 is excluded from the sales factor numerator on a  
361 water's edge group filing a combined water's edge group return  
362 even though an affiliated corporation may have nexus with this  
363 state and is subject to tax in this state.

364 (3) (a) The single water's edge group return must be filed  
365 in the name and with the federal employer identification number  
366 of the parent corporation if the parent is a member of a water's  
367 edge group and has nexus with this state. If there is no parent  
368 corporation, if the parent is not a water's edge group member,  
369 or if the parent does not have nexus with this state, the  
370 members of the water's edge group shall choose a Florida  
371 taxpayer member to file the return. After such a filing member  
372 has been selected, such member must remain the same in  
373 subsequent years unless an ownership change occurs or the filing  
374 member no longer has nexus with this state. The return must be  
375 signed by a responsible officer of the filing member as the  
376 agent of all members of the water's edge group subject to tax by  
377 this state.

378 (b) If the taxable years of the members of the water's  
379 edge group differ, the filing member's taxable year must be used  
380 to determine the net income for this state of the water's edge  
381 group. If the precise amount of a water's edge group member's  
382 income can be readily determined from the books for the months  
383 involved in the filing member's taxable year, those actual  
384 amounts shall be used. In the absence of such a precise  
385 determination, the income of a water's edge group member must be  
386 converted to conform to the taxable year of the filing member on

387 the basis of the number of months falling within the applicable  
388 taxable year. This method may be used only if the return can be  
389 timely filed after the member's taxable year ends. As an  
390 alternative, the water's edge group may include in its taxable  
391 income all of the taxable income of a group member whose taxable  
392 year ends within the taxable year of the water's edge group.  
393 Once one of these methods is used for a water's edge group  
394 member, that member must continue to use that method for  
395 succeeding years for as long as the corporation remains a member  
396 of the water's edge group. After the combined taxable income of  
397 the water's edge group is determined based upon the filing  
398 member's taxable year, the apportionment factor must be computed  
399 on the basis of the same taxable year.

400 (4) A water's edge group shall file a domestic disclosure  
401 spreadsheet in the manner and form prescribed by rule by the  
402 department. The term "domestic disclosure spreadsheet" means a  
403 spreadsheet that fully discloses the income reported to each  
404 state, the state tax liability, the method used for apportioning  
405 or allocating income to the various states, and other  
406 information provided for by rule as may be necessary to  
407 determine the proper amount of tax due to each state and to  
408 identify the water's edge group.

409 (5) The department may adopt rules and forms by rule as  
410 may be necessary or appropriate to administer and implement this  
411 section. It is the intent of the Legislature, by this section,  
412 to grant the department extensive authority to adopt rules and  
413 forms describing and defining principles for determining the  
414 existence of a water's edge group business, definitions of

415 common control, and methods of reporting and related forms,  
 416 principles, and definitions.

417 Section 5. Subsection (3) of section 220.14, Florida  
 418 Statutes, is amended to read:

419 220.14 Exemption.--

420 (3) Only one exemption shall be allowed to taxpayers  
 421 filing a combined water's edge group ~~consolidated~~ return under  
 422 this code.

423 Section 6. Paragraph (c) of subsection (5) of section  
 424 220.15, Florida Statutes, is amended to read:

425 220.15 Apportionment of adjusted federal income.--

426 (5) The sales factor is a fraction the numerator of which  
 427 is the total sales of the taxpayer in this state during the  
 428 taxable year or period and the denominator of which is the total  
 429 sales of the taxpayer everywhere during the taxable year or  
 430 period.

431 (c) Sales of a financial organization, including, but not  
 432 limited to, banking and savings institutions, investment  
 433 companies, real estate investment trusts, and brokerage  
 434 companies, occur in this state if derived from:

435 1. Fees, commissions, or other compensation for financial  
 436 services rendered within this state;

437 2. Gross profits from trading in stocks, bonds, or other  
 438 securities managed within this state;

439 3. Interest received within this state, other than  
 440 interest from loans secured by mortgages, deeds of trust, or  
 441 other liens upon real or tangible personal property located  
 442 without this state, and dividends received within this state;



443 4. Interest charged to customers at places of business  
 444 maintained within this state for carrying debit balances of  
 445 margin accounts, without deduction of any costs incurred in  
 446 carrying such accounts;

447 5. Interest, fees, commissions, or other charges or gains  
 448 from loans secured by mortgages, deeds of trust, or other liens  
 449 upon real or tangible personal property located in this state or  
 450 from installment sale agreements originally executed by a  
 451 taxpayer or the taxpayer's agent to sell real or tangible  
 452 personal property located in this state;

453 6. Rents from real or tangible personal property located  
 454 in this state; or

455 7. Any other gross income, including other interest,  
 456 resulting from the operation as a financial organization within  
 457 this state.

458  
 459 ~~In computing the amounts under this paragraph, any amount~~  
 460 ~~received by a member of an affiliated group (determined under s.~~  
 461 ~~1504(a) of the Internal Revenue Code, but without reference to~~  
 462 ~~whether any such corporation is an "includable corporation"~~  
 463 ~~under s. 1504(b) of the Internal Revenue Code) from another~~  
 464 ~~member of such group shall be included only to the extent such~~  
 465 ~~amount exceeds expenses of the recipient directly related~~  
 466 ~~thereto.~~

467 Section 7. Paragraphs (f), (g), and (h) of subsection (1)  
 468 of section 220.183, Florida Statutes, are amended to read:

469 220.183 Community contribution tax credit.--

470 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX  
 471 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM  
 472 SPENDING.--

473 ~~(f) A taxpayer who files a Florida consolidated return as~~  
 474 ~~a member of an affiliated group pursuant to s. 220.131(1) may be~~  
 475 ~~allowed the credit on a consolidated return basis.~~

476 (f)~~(g)~~ A taxpayer who is eligible to receive the credit  
 477 provided for in s. 624.5105 is not eligible to receive the  
 478 credit provided by this section.

479 (g)~~(h)~~ Notwithstanding paragraph (c), and for the 2008-  
 480 2009 fiscal year only, the total amount of tax credit which may  
 481 be granted for all programs approved under this section, s.  
 482 212.08(5)(p), and s. 624.5105 is \$13 million annually for  
 483 projects that provide homeownership opportunities for low-income  
 484 or very-low-income households as defined in s. 420.9071(19) and  
 485 (28) and \$3.5 million annually for all other projects. This  
 486 paragraph expires June 30, 2009.

487 Section 8. Subsection (1) of section 220.1845, Florida  
 488 Statutes, is amended to read:

489 220.1845 Contaminated site rehabilitation tax credit.--

490 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

491 (a) A credit in the amount of 50 percent of the costs of  
 492 voluntary cleanup activity that is integral to site  
 493 rehabilitation at the following sites is available against any  
 494 tax due for a taxable year under this chapter:

495 1. A drycleaning-solvent-contaminated site eligible for  
 496 state-funded site rehabilitation under s. 376.3078(3);

497           2. A drycleaning-solvent-contaminated site at which site  
498 rehabilitation is undertaken by the real property owner pursuant  
499 to s. 376.3078(11), if the real property owner is not also, and  
500 has never been, the owner or operator of the drycleaning  
501 facility where the contamination exists; or

502           3. A brownfield site in a designated brownfield area under  
503 s. 376.80.

504           (b) A tax credit applicant, or multiple tax credit  
505 applicants working jointly to clean up a single site, may not be  
506 granted more than \$500,000 per year in tax credits for each site  
507 voluntarily rehabilitated. Multiple tax credit applicants shall  
508 be granted tax credits in the same proportion as their  
509 contribution to payment of cleanup costs. Subject to the same  
510 conditions and limitations as provided in this section, a  
511 municipality, county, or other tax credit applicant which  
512 voluntarily rehabilitates a site may receive not more than  
513 \$500,000 per year in tax credits which it can subsequently  
514 transfer subject to the provisions in paragraph (f) ~~(g)~~.

515           (c) If the credit granted under this section is not fully  
516 used in any one year because of insufficient tax liability on  
517 the part of the corporation, the unused amount may be carried  
518 forward for up to 5 years. The carryover credit may be used in a  
519 subsequent year if the tax imposed by this chapter for that year  
520 exceeds the credit for which the corporation is eligible in that  
521 year after applying the other credits and unused carryovers in  
522 the order provided by s. 220.02(8). If during the 5-year period  
523 the credit is transferred, in whole or in part, pursuant to

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524 paragraph (f) ~~(g)~~, each transferee has 5 years after the date of  
525 transfer to use its credit.

526 ~~(d) A taxpayer that files a consolidated return in this~~  
527 ~~state as a member of an affiliated group under s. 220.131(1) may~~  
528 ~~be allowed the credit on a consolidated return basis up to the~~  
529 ~~amount of tax imposed upon the consolidated group.~~

530 (d) ~~(e)~~ A tax credit applicant that receives state-funded  
531 site rehabilitation under s. 376.3078(3) for rehabilitation of a  
532 drycleaning-solvent-contaminated site is ineligible to receive  
533 credit under this section for costs incurred by the tax credit  
534 applicant in conjunction with the rehabilitation of that site  
535 during the same time period that state-administered site  
536 rehabilitation was underway.

537 (e) ~~(f)~~ The total amount of the tax credits which may be  
538 granted under this section is \$2 million annually.

539 (f) ~~(g)~~ 1. Tax credits that may be available under this  
540 section to an entity eligible under s. 376.30781 may be  
541 transferred after a merger or acquisition to the surviving or  
542 acquiring entity and used in the same manner and with the same  
543 limitations.

544 2. The entity or its surviving or acquiring entity as  
545 described in subparagraph 1., may transfer any unused credit in  
546 whole or in units of at least 25 percent of the remaining  
547 credit. The entity acquiring such credit may use it in the same  
548 manner and with the same limitation as described in this  
549 section. Such transferred credits may not be transferred again  
550 although they may succeed to a surviving or acquiring entity

551 subject to the same conditions and limitations as described in  
552 this section.

553 3. If the credit is reduced due to a determination by the  
554 Department of Environmental Protection or an examination or  
555 audit by the Department of Revenue, the tax deficiency shall be  
556 recovered from the first entity, or the surviving or acquiring  
557 entity that claimed the credit up to the amount of credit taken.  
558 Any subsequent deficiencies shall be assessed against the entity  
559 acquiring and claiming the credit, or in the case of multiple  
560 succeeding entities in the order of credit succession.

561 (g)~~(h)~~ In order to encourage completion of site  
562 rehabilitation at contaminated sites being voluntarily cleaned  
563 up and eligible for a tax credit under this section, the tax  
564 credit applicant may claim an additional 25 percent of the total  
565 cleanup costs, not to exceed \$500,000, in the final year of  
566 cleanup as evidenced by the Department of Environmental  
567 Protection issuing a "No Further Action" order for that site.

568 (h)~~(i)~~ In order to encourage the construction of housing  
569 that meets the definition of affordable provided in s. 420.0004,  
570 an applicant for the tax credit may claim an additional 25  
571 percent of the total site rehabilitation costs that are eligible  
572 for tax credits under this section, not to exceed \$500,000. In  
573 order to receive this additional tax credit, the applicant must  
574 provide a certification letter from the Florida Housing Finance  
575 Corporation, the local housing authority, or other governmental  
576 agency that is a party to the use agreement indicating that the  
577 construction on the brownfield site has received a certificate  
578 of occupancy and the brownfield site has a properly recorded

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579 instrument that limits the use of the property to housing that  
580 meets the definition of affordable provided in s. 420.0004.

581 (i)~~(j)~~ In order to encourage the redevelopment of a  
582 brownfield site, as defined in the brownfield site  
583 rehabilitation agreement, that is hindered by the presence of  
584 solid waste, as defined in s. 403.703, a tax credit applicant,  
585 or multiple tax credit applicants working jointly to clean up a  
586 single brownfield site, may also claim costs required to address  
587 solid waste removal as defined in this paragraph in accordance  
588 with rules of the Department of Environmental Protection.  
589 Multiple tax credit applicants shall be granted tax credits in  
590 the same proportion as each applicant's contribution to payment  
591 of solid waste removal costs. These costs are eligible for a tax  
592 credit provided the applicant submits an affidavit stating that,  
593 after consultation with appropriate local government officials  
594 and the Department of Environmental Protection, to the best of  
595 the applicant's knowledge according to such consultation and  
596 available historical records, the brownfield site was never  
597 operated as a permitted solid waste disposal area or was never  
598 operated for monetary compensation and the applicant submits all  
599 other documentation and certifications required by this section.  
600 Under this section, wherever reference is made to "site  
601 rehabilitation," the Department of Environmental Protection  
602 shall instead consider whether or not the costs claimed are for  
603 solid waste removal. Tax credit applications claiming costs  
604 pursuant to this paragraph shall not be subject to the calendar-  
605 year limitation and January 31 annual application deadline, and  
606 the Department of Environmental Protection shall accept a one-

607 time application filed subsequent to the completion by the tax  
 608 credit applicant of the applicable requirements listed in this  
 609 section. A tax credit applicant may claim 50 percent of the cost  
 610 for solid waste removal, not to exceed \$500,000, after the  
 611 applicant has determined solid waste removal is completed for  
 612 the brownfield site. A solid waste removal tax credit  
 613 application may be filed only once per brownfield site. For the  
 614 purposes of this section, the term:

615 1. "Solid waste disposal area" means a landfill, dump, or  
 616 other area where solid waste has been disposed of.

617 2. "Monetary compensation" means the fees that were  
 618 charged or the assessments that were levied for the disposal of  
 619 solid waste at a solid waste disposal area.

620 3. "Solid waste removal" means removal of solid waste from  
 621 the land surface or excavation of solid waste from below the  
 622 land surface and removal of the solid waste from the brownfield  
 623 site. The term also includes:

624 a. Transportation of solid waste to a licensed or exempt  
 625 solid waste management facility or to a temporary storage area.

626 b. Sorting or screening of solid waste prior to removal  
 627 from the site.

628 c. Deposition of solid waste at a permitted or exempt  
 629 solid waste management facility, whether the solid waste is  
 630 disposed of or recycled.

631 (j)~~(\*)~~ In order to encourage the construction and  
 632 operation of a new health care facility as defined in s. 408.032  
 633 or s. 408.07, or a health care provider as defined in s. 408.07  
 634 or s. 408.7056, on a brownfield site, an applicant for a tax

635 credit may claim an additional 25 percent of the total site  
 636 rehabilitation costs, not to exceed \$500,000, if the applicant  
 637 meets the requirements of this paragraph. In order to receive  
 638 this additional tax credit, the applicant must provide  
 639 documentation indicating that the construction of the health  
 640 care facility or health care provider by the applicant on the  
 641 brownfield site has received a certificate of occupancy or a  
 642 license or certificate has been issued for the operation of the  
 643 health care facility or health care provider.

644 Section 9. Paragraphs (c) and (d) of subsection (5) of  
 645 section 220.187, Florida Statutes, are amended to read:

646 220.187 Credits for contributions to nonprofit  
 647 scholarship-funding organizations.--

648 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX  
 649 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

650 ~~(c) A taxpayer who files a Florida consolidated return as~~  
 651 ~~a member of an affiliated group pursuant to s. 220.131(1) may be~~  
 652 ~~allowed the credit on a consolidated return basis; however, the~~  
 653 ~~total credit taken by the affiliated group is subject to the~~  
 654 ~~limitation established under paragraph (a).~~

655 (c) ~~(d)~~ Effective for tax years beginning January 1, 2006,  
 656 a taxpayer may rescind all or part of its allocated tax credit  
 657 under this section. The amount rescinded shall become available  
 658 for purposes of the cap for that state fiscal year under this  
 659 section to an eligible taxpayer as approved by the department if  
 660 the taxpayer receives notice from the department that the  
 661 rescindment has been accepted by the department and the taxpayer  
 662 has not previously rescinded any or all of its tax credit



663 allocation under this section more than once in the previous 3  
 664 tax years. Any amount rescinded under this paragraph shall  
 665 become available to an eligible taxpayer on a first-come, first-  
 666 served basis based on tax credit applications received after the  
 667 date the rescindment is accepted by the department.

668 Section 10. Paragraphs (g) and (h) of subsection (1) of  
 669 section 220.19, Florida Statutes, are amended to read:

670 220.19 Child care tax credits.--

671 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

672 ~~(g) A taxpayer that files a consolidated return in this~~  
 673 ~~state as a member of an affiliated group under s. 220.131(1) may~~  
 674 ~~be allowed the credit on a consolidated return basis.~~

675 (g) ~~(h)~~ A taxpayer that is eligible to receive credit under  
 676 s. 624.5107 is ineligible to receive credit under this section.

677 Section 11. Paragraph (c) of subsection (3) of section  
 678 220.191, Florida Statutes, is amended to read:

679 220.191 Capital investment tax credit.--

680 (3)

681 (c) The credit granted under this subsection may be used  
 682 in whole or in part by the qualifying business ~~or any~~  
 683 ~~corporation that is either a member of that qualifying~~  
 684 ~~business's affiliated group of corporations, is a related entity~~  
 685 ~~taxable as a cooperative under subchapter T of the Internal~~  
 686 ~~Revenue Code, or, if the qualifying business is an entity~~  
 687 ~~taxable as a cooperative under subchapter T of the Internal~~  
 688 ~~Revenue Code, is related to the qualifying business. Any entity~~  
 689 ~~related to the qualifying business may continue to file as a~~  
 690 ~~member of a Florida-nexus consolidated group pursuant to a prior~~

691 ~~election made under s. 220.131(1), Florida Statutes (1985), even~~  
 692 ~~if the parent of the group changes due to a direct or indirect~~  
 693 ~~acquisition of the former common parent of the group. Any credit~~  
 694 ~~can be used by any of the affiliated companies or related~~  
 695 ~~entities referenced in this paragraph to the same extent as it~~  
 696 ~~could have been used by the qualifying business. However, any~~  
 697 ~~such use shall not operate to increase the amount of the credit~~  
 698 ~~or extend the period within which the credit must be used.~~

699 Section 12. Subsection (2) of section 220.192, Florida  
 700 Statutes, is amended to read:

701 220.192 Renewable energy technologies investment tax  
 702 credit.--

703 (2) TAX CREDIT.--For tax years beginning on or after  
 704 January 1, 2007, a credit against the tax imposed by this  
 705 chapter shall be granted in an amount equal to the eligible  
 706 costs. Credits may be used in tax years beginning January 1,  
 707 2007, and ending December 31, 2010, after which the credit shall  
 708 expire. If the credit is not fully used in any one tax year  
 709 because of insufficient tax liability on the part of the  
 710 corporation, the unused amount may be carried forward and used  
 711 in tax years beginning January 1, 2007, and ending December 31,  
 712 2012, after which the credit carryover expires and may not be  
 713 used. ~~A taxpayer that files a consolidated return in this state~~  
 714 ~~as a member of an affiliated group under s. 220.131(1) may be~~  
 715 ~~allowed the credit on a consolidated return basis up to the~~  
 716 ~~amount of tax imposed upon the consolidated group. Any eligible~~  
 717 ~~cost for which a credit is claimed and which is deducted or~~

718 otherwise reduces federal taxable income shall be added back in  
 719 computing adjusted federal income under s. 220.13.

720 Section 13. Paragraphs (e), (f), (g), (h), (i), (j), and  
 721 (k) of subsection (3) of section 220.193, Florida Statutes, are  
 722 amended to read:

723 220.193 Florida renewable energy production credit.--

724 (3) An annual credit against the tax imposed by this  
 725 section shall be allowed to a taxpayer, based on the taxpayer's  
 726 production and sale of electricity from a new or expanded  
 727 Florida renewable energy facility. For a new facility, the  
 728 credit shall be based on the taxpayer's sale of the facility's  
 729 entire electrical production. For an expanded facility, the  
 730 credit shall be based on the increases in the facility's  
 731 electrical production that are achieved after May 1, 2006.

732 ~~(e) A taxpayer that files a consolidated return in this~~  
 733 ~~state as a member of an affiliated group under s. 220.131(1) may~~  
 734 ~~be allowed the credit on a consolidated return basis up to the~~  
 735 ~~amount of tax imposed upon the consolidated group.~~

736 (e)~~(f)~~1. Tax credits that may be available under this  
 737 section to an entity eligible under this section may be  
 738 transferred after a merger or acquisition to the surviving or  
 739 acquiring entity and used in the same manner with the same  
 740 limitations.

741 2. The entity or its surviving or acquiring entity as  
 742 described in subparagraph 1. may transfer any unused credit in  
 743 whole or in units of no less than 25 percent of the remaining  
 744 credit. The entity acquiring such credit may use it in the same  
 745 manner and with the same limitations under this section. Such

746 transferred credits may not be transferred again although they  
747 may succeed to a surviving or acquiring entity subject to the  
748 same conditions and limitations as described in this section.

749 3. In the event the credit provided for under this section  
750 is reduced as a result of an examination or audit by the  
751 department, such tax deficiency shall be recovered from the  
752 first entity or the surviving or acquiring entity to have  
753 claimed such credit up to the amount of credit taken. Any  
754 subsequent deficiencies shall be assessed against any entity  
755 acquiring and claiming such credit, or in the case of multiple  
756 succeeding entities in the order of credit succession.

757 (f)~~(g)~~ Notwithstanding any other provision of this  
758 section, credits for the production and sale of electricity from  
759 a new or expanded Florida renewable energy facility may be  
760 earned between January 1, 2007, and June 30, 2010. The combined  
761 total amount of tax credits which may be granted for all  
762 taxpayers under this section is limited to \$5 million per state  
763 fiscal year.

764 (g)~~(h)~~ A taxpayer claiming a credit under this section  
765 shall be required to add back to net income that portion of its  
766 business deductions claimed on its federal return paid or  
767 incurred for the taxable year which is equal to the amount of  
768 the credit allowable for the taxable year under this section.

769 (h)~~(i)~~ A taxpayer claiming credit under this section may  
770 not claim a credit under s. 220.192. A taxpayer claiming credit  
771 under s. 220.192 may not claim a credit under this section.

772 (i)~~(j)~~ When an entity treated as a partnership or a  
773 disregarded entity under this chapter produces and sells

774 electricity from a new or expanded renewable energy facility,  
 775 the credit earned by such entity shall pass through in the same  
 776 manner as items of income and expense pass through for federal  
 777 income tax purposes. When an entity applies for the credit and  
 778 the entity has received the credit by a pass-through, the  
 779 application must identify the taxpayer that passed the credit  
 780 through, all taxpayers that received the credit, and the  
 781 percentage of the credit that passes through to each recipient  
 782 and must provide other information that the department requires.

783 (j)~~(k)~~ A taxpayer's use of the credit granted pursuant to  
 784 this section does not reduce the amount of any credit available  
 785 to such taxpayer under s. 220.186.

786 Section 14. Section 220.51, Florida Statutes, is amended  
 787 to read:

788 220.51 Promulgation of rules and regulations.--In  
 789 accordance with the Administrative Procedure Act, chapter 120,  
 790 the department is authorized to make, promulgate, and enforce  
 791 such reasonable rules and regulations, and to prescribe such  
 792 forms relating to the administration and enforcement of the  
 793 provisions of this code, as it may deem appropriate, including:

794 (1) Rules for initial implementation of this code and for  
 795 taxpayers' transitional taxable years commencing before and  
 796 ending after January 1, 1972.†

797 (2) Rules or regulations to clarify whether certain  
 798 groups, organizations, or associations formed under the laws of  
 799 this state or any other state, country, or jurisdiction shall be  
 800 deemed "taxpayers" for the purposes of this code, in accordance  
 801 with the legislative declarations of intent in s. 220.02.†~~and~~

802 ~~(3) Regulations relating to consolidated reporting for~~  
 803 ~~affiliated groups of corporations, in order to provide for an~~  
 804 ~~equitable and just administration of this code with respect to~~  
 805 ~~multicorporate taxpayers.~~

806 Section 15. Section 220.64, Florida Statutes, is amended  
 807 to read:

808 220.64 Other provisions applicable to franchise tax.--To  
 809 the extent that they are not manifestly incompatible with the  
 810 provisions of this part, parts I, III, IV, V, VI, VIII, IX, and  
 811 X of this code and ss. 220.12, 220.13, 220.136, 220.15, and  
 812 220.16 apply to the franchise tax imposed by this part. ~~Under~~  
 813 ~~rules prescribed in s. 220.131, a consolidated return may be~~  
 814 ~~filed by any affiliated group of corporations composed of one or~~  
 815 ~~more banks or savings associations, its or their Florida parent~~  
 816 ~~corporation, and any nonbank or nonsavings subsidiaries of such~~  
 817 ~~parent corporation.~~

818 Section 16. Subsections (9) and (10) of section 376.30781,  
 819 Florida Statutes, are amended to read:

820 376.30781 Tax credits for rehabilitation of drycleaning-  
 821 solvent-contaminated sites and brownfield sites in designated  
 822 brownfield areas; application process; rulemaking authority;  
 823 revocation authority.--

824 (9) On or before May 1, the Department of Environmental  
 825 Protection shall inform each tax credit applicant that is  
 826 subject to the January 31 annual application deadline of the  
 827 applicant's eligibility status and the amount of any tax credit  
 828 due. The department shall provide each eligible tax credit  
 829 applicant with a tax credit certificate that must be submitted

830 with its tax return to the Department of Revenue to claim the  
 831 tax credit or be transferred pursuant to s. 220.1845(1) (f) ~~(g)~~.  
 832 The May 1 deadline for annual site rehabilitation tax credit  
 833 certificate awards shall not apply to any tax credit application  
 834 for which the department has issued a notice of deficiency  
 835 pursuant to subsection (8). The department shall respond within  
 836 90 days after receiving a response from the tax credit applicant  
 837 to such a notice of deficiency. Credits may not result in the  
 838 payment of refunds if total credits exceed the amount of tax  
 839 owed.

840 (10) For solid waste removal, new health care facility or  
 841 health care provider, and affordable housing tax credit  
 842 applications, the Department of Environmental Protection shall  
 843 inform the applicant of the department's determination within 90  
 844 days after the application is deemed complete. Each eligible tax  
 845 credit applicant shall be informed of the amount of its tax  
 846 credit and provided with a tax credit certificate that must be  
 847 submitted with its tax return to the Department of Revenue to  
 848 claim the tax credit or be transferred pursuant to s.  
 849 220.1845(1) (f) ~~(g)~~. Credits may not result in the payment of  
 850 refunds if total credits exceed the amount of tax owed.

851 Section 17. Transition rules.--

852 (1) For the first taxable year beginning on or after  
 853 January 1, 2010, a taxpayer that filed a Florida return for the  
 854 preceding taxable year and is a member of a water's edge group  
 855 shall compute its income together with all members of the  
 856 water's edge group and file a separate corporate income tax

857 return or may elect to combine its tax return with all members  
 858 of the water's edge group.

859 (2) An affiliated group of corporations that filed a  
 860 Florida consolidated return pursuant to an election provided in  
 861 former s. 220.131, Florida Statutes, shall cease filing a  
 862 Florida consolidated return for taxable years beginning on or  
 863 after January 1, 2010, and shall file water's edge group returns  
 864 or may elect to file a combined water's edge group return.

865 (3) An affiliated group of corporations that filed a  
 866 Florida consolidated return pursuant to the election provided in  
 867 s. 220.131(1), Florida Statutes (1985), that allowed the  
 868 affiliated group to make an election with 90 days after December  
 869 20, 1984, or upon filing the taxpayer's first return after  
 870 December 20, 1984, whichever occurred later, shall cease filing  
 871 a Florida consolidated return using that method for taxable  
 872 years beginning on or after January 1, 2010, and shall file  
 873 water's edge group returns or may elect to file a combined  
 874 water's edge group return.

875 Section 18. Section 220.131, Florida Statutes, is  
 876 repealed.

877 Section 19. Of the funds recaptured by this act, the sum  
 878 of \$50 million is appropriated from the General Revenue Fund to  
 879 the State University System for workforce education, to be  
 880 allocated by the Board of Governors; the sum of \$50 million is  
 881 appropriated from the General Revenue Fund to community colleges  
 882 for workforce education, to be allocated by the State Board of  
 883 Education; and the remainder of such funds, as determined by the  
 884 Revenue Estimating Conference, shall be appropriated from the



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885 | General Revenue Fund to the various school districts to reduce  
886 | the required local effort, to be allocated as provided in the  
887 | General Appropriations Act.

888 |       Section 20. This act shall take effect July 1, 2009.