

By Senator Ring

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1 A bill to be entitled
2 An act relating to the corporate income tax; amending
3 s. 220.131, F.S.; conforming provisions to changes
4 made by the act; creating s. 220.153, F.S.; providing
5 for the apportionment of certain taxpayer's adjusted
6 federal income solely by the sales factor provided in
7 s. 220.15, F.S.; providing for eligibility based on
8 the taxpayer's capital expenditures and number of
9 full-time employees; providing an application process;
10 authorizing the Department of Revenue to examine and
11 verify that a taxpayer has correctly apportioned its
12 taxes; authorizing the Office of Tourism, Trade, and
13 Economic Development to approve and revoke approval of
14 an application; providing for the recapture of unpaid
15 taxes, interest, and penalties; authorizing the office
16 and the department to adopt rules; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsection (5) of section 220.131, Florida
22 Statutes, is amended to read:

23 220.131 Adjusted federal income; affiliated groups.—

24 (5) Each taxpayer shall apportion adjusted federal income
25 under s. 220.15 as a member of an affiliated group which files a
26 consolidated return under this section on the basis of
27 apportionment factors described in s. 220.15. For the purposes
28 of this subsection, each special industry member included in an
29 affiliated group filing a consolidated return ~~hereunder~~, who

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30 ~~which member~~ would otherwise be permitted to use a special
31 method of apportionment under s. 220.151 or s. 220.153, shall
32 construct the numerator of its sales, property, and payroll
33 factors, respectively, by multiplying the denominator of each
34 such factor by the premiums or revenue miles factor ratio
35 otherwise applicable under ~~pursuant to~~ s. 220.151 in the manner
36 prescribed by ~~the~~ department ~~by~~ rule.

37 Section 2. Section 220.153, Florida Statutes, is created to
38 read:

39 220.153 Apportionment by sales factor.-

40 (1) APPORTIONMENT OF TAXES; ELIGIBILITY.-A taxpayer, not
41 including a financial organization as defined in s. 220.15(6) or
42 a bank, savings association, international banking facility, or
43 banking organization as defined in s. 220.62, doing business
44 within and without this state, who applies and demonstrates to
45 the Office of Tourism, Trade, and Economic Development that, on
46 or after July 1, 2012, it has made qualified capital
47 expenditures equal to or exceeding \$250 million and has
48 maintained the number of full-time employees who were employed
49 by the taxpayer in this state at the time it notified the office
50 of its intent to apply for apportionment pursuant to this
51 section, may apportion its adjusted federal income solely by the
52 sales factor set forth in s. 220.15(5), commencing in the
53 taxable year of such determination. For the purposes of this
54 section, a full-time employee must work an average of at least
55 36 hours per week for an entire year and receive an average
56 weekly wage greater than the lower of the state or local average
57 weekly wages for the taxpayer's industry; however, a full-time
58 employee does not include an employee who is hired to construct

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59 improvements to real property.

60 (2) APPLICATION PROCESS.—

61 (a) To qualify as a taxpayer who is eligible to apportion
62 its adjusted federal income under this section:

63 1. The taxpayer must notify the Office of Tourism, Trade,
64 and Economic Development of its intent to submit an application
65 to apportion its adjusted federal income in order to commence
66 the 2-year period for measuring qualified capital expenditures.

67 2. The application must be submitted within 2 years after
68 notifying the office of the taxpayer's intent to qualify. The
69 application must be made under oath and provide such information
70 as the office reasonably requires by rule for determining the
71 applicant's eligibility to apportion adjusted federal income.
72 The taxpayer is responsible for affirmatively demonstrating to
73 the satisfaction of the office that it meets the eligibility
74 requirements.

75 (b) The taxpayer notice and application forms shall be
76 established by the office by rule. The office shall acknowledge
77 receipt of the notice and approve or deny the application in
78 writing within 45 days after receipt.

79 (c) Upon approval, the taxpayer, by the due date for filing
80 its tax return for the taxable year during which its eligibility
81 has been determined, including any extensions thereof, may elect
82 to apportion its adjusted federal income by filing a return for
83 the taxable year using the method provided under this chapter.

84 (d) Once made, a taxpayer may not revoke the election for 4
85 years, at which time the taxpayer may renew the election by the
86 due date, or extended due date, for filing its tax return by
87 filing a return for the next taxable year using the method

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88 provided under this chapter. If the taxpayer does not renew its
89 election, it shall apportion its adjusted federal income
90 pursuant to s. 220.15 and must reapply to apportion its adjusted
91 federal income pursuant to this section.

92 (3) REVIEW AUTHORITY; RECAPTURE OF TAX.—

93 (a) In addition to its existing audit authority, the
94 department may perform any financial and technical review and
95 investigation, including examining the accounts, books, and
96 records of the taxpayer as necessary, to verify that the
97 taxpayer's tax return correctly computes and apportions adjusted
98 federal income and to ensure compliance with this chapter.

99 (b) The Office of Tourism, Trade, and Economic Development
100 may, by order, revoke its decision to grant eligibility for
101 apportionment, and may also order the recalculation of
102 apportionment factors to those applicable under s. 220.15 if, as
103 the result of an audit, investigation, or examination, it
104 determines that information provided by the taxpayer in the
105 application, or in a statement, representation, record, report,
106 plan, or other document provided to the office to become
107 eligible for apportionment, was materially false at the time it
108 was made and that an individual acting on behalf of the taxpayer
109 knew, or should have known, that the information submitted was
110 false. The taxpayer shall pay such additional taxes and interest
111 as may be due pursuant to this chapter computed as the
112 difference between the tax that would have been due under the
113 apportionment formula provided in s. 220.15 for such years and
114 the tax actually paid. In addition, the department shall assess
115 a penalty equal to 100 percent of the additional tax due.

116 (c) The office shall immediately notify the department of

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117 an order affecting a taxpayers eligibility to apportion tax
118 pursuant to this section. A taxpayer who is liable for past tax
119 must file an amended return with the department, or such other
120 report as the department prescribes by rule, and pay any
121 required tax, interest, and penalty within 60 days after the
122 taxpayer receives notification from the office that the
123 previously approved credits have been revoked. If the revocation
124 is contested, the taxpayer shall file an amended return or other
125 report within 30 days after an order becomes final. A taxpayer
126 who fails to pay the past tax, interest, and penalty by the due
127 date is subject to the penalties provided in s. 220.803.

128 (4) RULES.—The Office of Tourism, Trade, and Economic
129 Development and the department may adopt rules to administer
130 this section.

131 Section 3. This act shall take effect July 1, 2010.