

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

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

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

22           220.131 Adjusted federal income; affiliated groups.—

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

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

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

38 220.153 Apportionment by sales factor.-

39 (1) APPORTIONMENT OF TAXES; ELIGIBILITY.-A taxpayer, not  
 40 including a financial organization as defined in s. 220.15(6) or  
 41 a bank, savings association, international banking facility, or  
 42 banking organization as defined in s. 220.62, doing business  
 43 within and without this state, who applies and demonstrates to  
 44 the Office of Tourism, Trade, and Economic Development that, on  
 45 or after July 1, 2013, it has made qualified capital  
 46 expenditures equal to or exceeding \$250 million and has  
 47 maintained the number of full-time employees who were employed  
 48 by the taxpayer in this state at the time it notified the office  
 49 of its intent to apply for apportionment pursuant to this  
 50 section, may apportion its adjusted federal income solely by the  
 51 sales factor set forth in s. 220.15(5), commencing in the  
 52 taxable year of such determination. For the purposes of this  
 53 section, a full-time employee must work an average of at least  
 54 36 hours per week for an entire year and receive an average  
 55 weekly wage greater than the lower of the state or local average  
 56 weekly wages for the taxpayer's industry; however, a full-time

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57 employee does not include an employee who is hired to construct  
58 improvements to real property.

59 (2) APPLICATION PROCESS.—

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

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

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

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

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

84 (d) Once made, a taxpayer may not revoke the election for

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85 4 years, at which time the taxpayer may renew the election by  
86 the due date, or extended due date, for filing its tax return by  
87 filing a return for the next taxable year using the method  
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

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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  
117 an order affecting a taxpayer's 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, 2011.