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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2011	.	
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The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (r) of subsection (5) of section 212.08, Florida Statutes, is created to read:

(r) Capital investment tax credit; authorization; eligibility for credits.—The credit against the state sales and use tax granted pursuant to s. 220.191(2)(d) shall be deducted from any sales and use tax remitted by the dealer to the department by electronic funds transfer and may only be deducted on a sales and use tax return initiated through electronic data



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13 interchange. The dealer shall separately state the credit on the  
14 electronic return. The net amount of tax due and payable must be  
15 remitted by electronic funds transfer. If the credit is larger  
16 than the amount owed on the sales and use tax return, the unused  
17 portion may be carried forward to a succeeding reporting period  
18 within the 12-month period immediately following the first  
19 return approved by the department that the dealer may claim. The  
20 credit expires at the end of the 12-month period approved by the  
21 department and may not be claimed on a sales and use tax return  
22 filed with the department after the end of the 12-month period.

23 Section 2. Section 220.191, Florida Statutes, is amended to  
24 read:

25 220.191 Capital investment tax credit.-

26 (1) DEFINITIONS.-As used in ~~For purposes of~~ this section,  
27 the term:

28 (a) "Commencement of operations" means the beginning of  
29 active operations by a qualifying business of the principal  
30 function for which a qualifying project was constructed.

31 (b) "Cumulative capital investment" means the total capital  
32 investment in land, buildings, and equipment made in connection  
33 with a qualifying project during the period from the beginning  
34 of construction of the project to the commencement of  
35 operations.

36 (c) "Eligible capital costs" means all expenses incurred by  
37 a qualifying business in connection with the acquisition,  
38 construction, installation, and equipping of a qualifying  
39 project during the period from the beginning of construction of  
40 the project to the commencement of operations, including, but  
41 not limited to:



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42           1. The costs of acquiring, constructing, installing,  
43 equipping, and financing a qualifying project, including all  
44 obligations incurred for labor and obligations to contractors,  
45 subcontractors, builders, and materialmen.

46           2. The costs of acquiring land or rights to land and any  
47 cost incidental thereto, including recording fees.

48           3. The costs of architectural and engineering services,  
49 including test borings, surveys, estimates, plans and  
50 specifications, preliminary investigations, environmental  
51 mitigation, and supervision of construction, as well as the  
52 performance of all duties required by or consequent to the  
53 acquisition, construction, installation, and equipping of a  
54 qualifying project.

55           4. The costs associated with the installation of fixtures  
56 and equipment; surveys, including archaeological and  
57 environmental surveys; site tests and inspections; subsurface  
58 site work and excavation; removal of structures, roadways, and  
59 other surface obstructions; filling, grading, paving, and  
60 provisions for drainage, storm water retention, and installation  
61 of utilities, including water, sewer, sewage treatment, gas,  
62 electricity, communications, and similar facilities; and offsite  
63 construction of utility extensions to the boundaries of the  
64 property.

65  
66 The term does ~~eligible capital costs shall~~ not include the cost  
67 of any property previously owned or leased by the qualifying  
68 business.

69           (d) "Income generated by or arising out of the qualifying  
70 project" means the qualifying project's annual taxable income as



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71 determined by generally accepted accounting principles and under  
72 s. 220.13.

73 (e) "Jobs" means full-time equivalent positions, as that  
74 term is consistent with terms used by the Agency for Workforce  
75 Innovation and the United States Department of Labor for  
76 purposes of unemployment tax administration and employment  
77 estimation, resulting directly from a project in this state. The  
78 term does not include temporary construction jobs involved in  
79 the construction of the project facility.

80 (f) "Office" means the Office of Tourism, Trade, and  
81 Economic Development.

82 (g) "Qualifying business" means a business which  
83 establishes a qualifying project in this state and which is  
84 certified by the office to receive tax credits pursuant to this  
85 section.

86 (h) "Qualifying project" means:

87 1. A new or expanding facility in this state which creates  
88 at least 100 new jobs in this state and is in one of the high-  
89 impact sectors identified by Enterprise Florida, Inc., and  
90 certified by the office pursuant to s. 288.108(6), including,  
91 but not limited to, aviation, aerospace, automotive, and silicon  
92 technology industries;

93 2. A new or expanded facility in this state which is  
94 engaged in a target industry designated pursuant to the  
95 procedure specified in s. 288.106(2)(t) and which is induced by  
96 this credit to create or retain at least 1,000 jobs in this  
97 state, provided that at least 100 of those jobs are new, pay an  
98 annual average wage of at least 130 percent of the average  
99 private sector wage in the area as defined in s. 288.106(2), and



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100 make a cumulative capital investment of at least \$100 million  
101 after July 1, 2005. Jobs may be considered retained only if  
102 there is significant evidence that the loss of jobs is imminent.  
103 Notwithstanding subsection (2), annual credits against the tax  
104 imposed by this chapter may ~~shall~~ not exceed 50 percent of the  
105 increased annual corporate income tax liability or the premium  
106 tax liability generated by or arising out of a project  
107 qualifying under this subparagraph. A facility that qualifies  
108 under this subparagraph for an annual credit against the tax  
109 imposed by this chapter may take the tax credit for a period not  
110 to exceed 5 years; or

111 3. A new or expanded headquarters facility in this state  
112 which locates in an enterprise zone and brownfield area and is  
113 induced by this credit to create at least 1,500 jobs which on  
114 average pay at least 200 percent of the statewide average annual  
115 private sector wage, as published by the Agency for Workforce  
116 Innovation or its successor, and which new or expanded  
117 headquarters facility makes a cumulative capital investment in  
118 this state of at least \$250 million.

119 (2) (a) An annual credit against the tax imposed by this  
120 chapter shall be granted to any qualifying business in an amount  
121 equal to 5 percent of the eligible capital costs generated by a  
122 qualifying project, for a period not to exceed 20 years  
123 beginning with the commencement of operations of the project.  
124 Unless assigned as described in this subsection, the tax credit  
125 shall be granted against only the corporate income tax liability  
126 or the premium tax liability generated by or arising out of the  
127 qualifying project, and the sum of all tax credits provided  
128 pursuant to this section may ~~shall~~ not exceed 100 percent of the



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129 eligible capital costs of the project. Except as provided in  
130 paragraph (d), a ~~In no event may any~~ credit granted under this  
131 section may not be carried forward or backward by any qualifying  
132 business with respect to a subsequent or prior year. The annual  
133 tax credit granted under this section may ~~shall~~ not exceed the  
134 following percentages of the annual corporate income tax  
135 liability or the premium tax liability generated by or arising  
136 out of a qualifying project:

137       1. One hundred percent for a qualifying project which  
138 results in a cumulative capital investment of at least \$100  
139 million.

140       2. Seventy-five percent for a qualifying project which  
141 results in a cumulative capital investment of at least \$50  
142 million but less than \$100 million.

143       3. Fifty percent for a qualifying project which results in  
144 a cumulative capital investment of at least \$25 million but less  
145 than \$50 million.

146       (b) A qualifying project that ~~which~~ results in a cumulative  
147 capital investment of less than \$25 million is not eligible for  
148 the capital investment tax credit. An insurance company claiming  
149 a credit against premium tax liability under this program is  
150 ~~shall~~ not ~~be~~ required to pay any additional retaliatory tax  
151 levied pursuant to s. 624.5091 as a result of claiming such  
152 credit. Because credits under this section are available to an  
153 insurance company, s. 624.5091 does not limit such credit in any  
154 manner.

155       (c) A qualifying business that establishes a qualifying  
156 project that includes locating a new solar panel manufacturing  
157 facility in this state that generates a minimum of 400 jobs



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158 within 6 months after commencement of operations with an average  
159 salary of at least \$50,000 may assign or transfer the annual  
160 credit, or any portion thereof, granted under this section to  
161 any other business. However, the amount of the tax credit that  
162 may be transferred in any year is ~~shall be~~ the lesser of the  
163 qualifying business's state corporate income tax liability for  
164 that year, as limited by the percentages applicable under  
165 paragraph (a) and as calculated before ~~prior to~~ taking any  
166 credit pursuant to this section, or the credit amount granted  
167 for that year. A business receiving the transferred or assigned  
168 credits may use the credits only in the year received, and the  
169 credits may not be carried forward or backward. To perfect the  
170 transfer, the transferor must ~~shall~~ provide the department with  
171 a written transfer statement notifying the department of the  
172 transferor's intent to transfer the tax credits to the  
173 transferee; the date the transfer is effective; the transferee's  
174 name, address, and federal taxpayer identification number; the  
175 tax period; and the amount of tax credits to be transferred. The  
176 department shall, upon receipt of a transfer statement  
177 conforming to the requirements of this paragraph, provide the  
178 transferee with a certificate reflecting the tax credit amounts  
179 transferred. A copy of the certificate must be attached to each  
180 tax return for which the transferee seeks to apply such tax  
181 credits.

182 (d) For taxable years beginning on or after January 1,  
183 2011, if a credit granted under this subsection is not fully  
184 used in a taxable year going forward because of insufficient tax  
185 liability on the part of the qualifying business, the qualifying  
186 business is entitled to a sales and use tax credit against its



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187 state sales and use tax liability in an amount equal to the  
188 corporate income or insurance premium tax credit that could not  
189 be used in that tax year because of insufficient tax liability  
190 arising out of the project. The sales and use tax credit shall  
191 be granted against state sales and use taxes collected,  
192 reported, and remitted pursuant to chapter 212 during the 12-  
193 month period beginning on the date that the qualifying business  
194 files its corporate income tax return for the year in which the  
195 credit granted under this subsection is not fully used.

196 1. The sales and use tax credit granted under this  
197 paragraph is subject to the following:

198 a. A qualifying business that applies its sales and use tax  
199 credit against its sales and use tax liability must make capital  
200 investments in Florida, in addition to its cumulative capital  
201 investment, in an amount equal to or greater than the applied  
202 credit within 5 years after the date that the qualifying  
203 business first applied the sales and use tax credit to its sales  
204 and use tax return.

205 b. A qualifying business must annually provide to the  
206 office, the President of the Senate, and the Speaker of the  
207 House of Representatives a report listing the capital  
208 investments made in each tax year of the business in which the  
209 business claims a sales and use tax credit pursuant to this  
210 paragraph and must provide a final summary report of all capital  
211 investments made pursuant to requirements of this paragraph.

212 c. If the qualifying business fails to make the capital  
213 investments pursuant to subparagraph (a)1. or if the business  
214 fails to report its capital investments pursuant to subparagraph  
215 (a)2., the qualifying business shall repay to the department the





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216 difference between the sales and use tax credits received and  
217 the amount of capital investments accounted for, plus interest  
218 as provided for delinquent taxes under chapter 212.

219 d. To be eligible for the sales and use tax credit, a  
220 qualifying business must have its headquarters in this state;  
221 qualify for the capital investment tax credit pursuant to  
222 subparagraph (a)1.; and between January 1, 2006, and December  
223 31, 2008, signed an agreement with the department for the  
224 determination of income generated by or arising out of the  
225 qualifying project.

226 e. The qualifying business must notify the department of  
227 its intent to apply the credit against its state sales and use  
228 taxes and the amount it is entitled to claim prior to claiming  
229 the credit as provided in s. 212.08(5)(r). The department will  
230 send written instructions to the taxpayer on how to claim the  
231 credit on a sales and use tax return initiated through  
232 electronic data exchange.

233 2. The maximum amount of tax credits that any one  
234 qualifying business may claim as a state sales and use tax  
235 credit under this section on sales and use tax returns due  
236 during any state fiscal year is \$5 million.

237 3. The office and the department may adopt rules to  
238 administer this paragraph.

239 (3) (a) Notwithstanding subsection (2), an annual credit  
240 against the tax imposed by this chapter shall be granted to a  
241 qualifying business which establishes a qualifying project  
242 pursuant to subparagraph (1)(h)3., in an amount equal to the  
243 lesser of \$15 million or 5 percent of the eligible capital costs  
244 made in connection with a qualifying project, for a period not



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245 to exceed 20 years beginning with the commencement of operations  
246 of the project. The tax credit shall be granted against the  
247 corporate income tax liability of the qualifying business and as  
248 further provided in paragraph (c). The total tax credit provided  
249 pursuant to this subsection shall be equal to no more than 100  
250 percent of the eligible capital costs of the qualifying project.

251 (b) If the credit granted under this subsection is not  
252 fully used in any one year because of insufficient tax liability  
253 on the part of the qualifying business, the unused amount may be  
254 carried forward for a period not to exceed 20 years after the  
255 commencement of operations of the project. The carryover credit  
256 may be used in a subsequent year when the tax imposed by this  
257 chapter for that year exceeds the credit for which the  
258 qualifying business is eligible in that year under this  
259 subsection after applying the other credits and unused  
260 carryovers in the order provided by s. 220.02(8).

261 (c) The credit granted under this subsection may be used in  
262 whole or in part by the qualifying business or any corporation  
263 that is either a member of that qualifying business's affiliated  
264 group of corporations, is a related entity taxable as a  
265 cooperative under subchapter T of the Internal Revenue Code, or,  
266 if the qualifying business is an entity taxable as a cooperative  
267 under subchapter T of the Internal Revenue Code, is related to  
268 the qualifying business. Any entity related to the qualifying  
269 business may continue to file as a member of a Florida-nexus  
270 consolidated group pursuant to a prior election made under s.  
271 220.131(1), Florida Statutes (1985), even if the parent of the  
272 group changes due to a direct or indirect acquisition of the  
273 former common parent of the group. Any credit can be used by any



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274 of the affiliated companies or related entities referenced in  
275 this paragraph to the same extent as it could have been used by  
276 the qualifying business. However, any such use shall not operate  
277 to increase the amount of the credit or extend the period within  
278 which the credit must be used.

279 (4) Before ~~Prior to~~ receiving tax credits pursuant to this  
280 section, a qualifying business must achieve and maintain the  
281 minimum employment goals beginning with the commencement of  
282 operations at a qualifying project and continuing each year  
283 thereafter during which tax credits are available pursuant to  
284 this section.

285 (5) Applications shall be reviewed and certified pursuant  
286 to s. 288.061. The office, upon a recommendation by Enterprise  
287 Florida, Inc., shall first certify a business as eligible to  
288 receive tax credits pursuant to this section prior to the  
289 commencement of operations of a qualifying project, and such  
290 certification shall be transmitted to the Department ~~of Revenue~~.  
291 Upon receipt of the certification, the Department ~~of Revenue~~  
292 shall enter into a written agreement with the qualifying  
293 business specifying, at a minimum, the method by which income  
294 generated by or arising out of the qualifying project will be  
295 determined.

296 (6) The office, in consultation with Enterprise Florida,  
297 Inc., is authorized to develop the necessary guidelines and  
298 application materials for the certification process described in  
299 subsection (5).

300 (7) ~~It shall be the responsibility of~~ The qualifying  
301 business has the responsibility to affirmatively demonstrate to  
302 the satisfaction of the Department ~~of Revenue~~ that such business



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303 meets the job creation and capital investment requirements of  
304 this section.

305 (8) The Department ~~of Revenue~~ may specify by rule the  
306 methods by which a project's pro forma annual taxable income is  
307 determined.

308 Section 3. This act shall take effect July 1, 2011.

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311 ===== T I T L E A M E N D M E N T =====

312 And the title is amended as follows:

313 Delete everything before the enacting clause  
314 and insert:

315 A bill to be entitled

316 An act relating to the capital investment tax credit;  
317 amending s. 212.08, F.S.; specifying procedures to claim a sales  
318 and use tax credit; amending s. 220.191, F.S.; authorizing a  
319 qualifying business that has insufficient corporate income tax  
320 liability to fully claim a capital investment tax credit to  
321 apply the credit against its liability for sales and use taxes  
322 to be collected, reported, and remitted to the Department of  
323 Revenue; requiring a qualifying business that receives a credit  
324 against its sales and use tax liability to make additional  
325 capital investments; requiring a qualifying business to annually  
326 report its capital investments to the Office of Tourism, Trade,  
327 and Economic Development, the President of the Senate, and the  
328 Speaker of the House of Representatives; requiring a qualifying  
329 business that fails to make the required capital investments to  
330 repay the amount of the sales and use tax credit claimed with  
331 interest; limiting the availability of the sales and use tax



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332 credit to certain businesses that have their headquarters in  
333 this state, that qualify for the capital investment tax credit  
334 under certain circumstances, and that entered in an agreement  
335 with the Department of Revenue during a certain period; limiting  
336 the annual amount of tax credits that may be approved for each  
337 eligible qualifying business; authorizing the Office of Tourism,  
338 Trade, and Economic Development and the Department of Revenue to  
339 adopt rules; providing an effective date.