

By Senator Altman

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1 A bill to be entitled
2 An act relating to the capital investment tax credit;
3 amending s. 220.191, F.S.; authorizing a qualifying
4 business that has insufficient corporate income tax
5 liability to fully claim a capital investment tax
6 credit to apply the credit against its liability for
7 sales and use taxes to be collected, reported, and
8 remitted to the Department of Revenue; requiring a
9 qualifying business that receives a credit against its
10 sales and use tax liability to make additional capital
11 investments; requiring a qualifying business to
12 annually report its capital investments to the Office
13 of Tourism, Trade, and Economic Development, the
14 President of the Senate, and the Speaker of the House
15 of Representatives; requiring a qualifying business
16 that fails to make the required capital investments to
17 repay the amount of the sales and use tax credit
18 claimed with interest; limiting the availability of
19 the sales tax credit to certain businesses that have
20 their headquarters in this state, that qualify for the
21 capital investment tax credit under certain
22 circumstances, and that were approved to participate
23 in the capital investment tax credit program during a
24 certain period; limiting the annual amount of tax
25 credits that may be approved; authorizing the Office
26 of Tourism, Trade, and Economic Development and the
27 Department of Revenue to adopt rules; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 220.191, Florida Statutes, is amended to
33 read:

34 220.191 Capital investment tax credit.—

35 (1) DEFINITIONS.—As used in ~~For purposes of~~ this section,
36 the term:

37 (a) "Commencement of operations" means the beginning of
38 active operations by a qualifying business of the principal
39 function for which a qualifying project was constructed.

40 (b) "Cumulative capital investment" means the total capital
41 investment in land, buildings, and equipment made in connection
42 with a qualifying project during the period from the beginning
43 of construction of the project to the commencement of
44 operations.

45 (c) "Eligible capital costs" means all expenses incurred by
46 a qualifying business in connection with the acquisition,
47 construction, installation, and equipping of a qualifying
48 project during the period from the beginning of construction of
49 the project to the commencement of operations, including, but
50 not limited to:

51 1. The costs of acquiring, constructing, installing,
52 equipping, and financing a qualifying project, including all
53 obligations incurred for labor and obligations to contractors,
54 subcontractors, builders, and materialmen.

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

57 3. The costs of architectural and engineering services,
58 including test borings, surveys, estimates, plans and

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59 specifications, preliminary investigations, environmental
60 mitigation, and supervision of construction, as well as the
61 performance of all duties required by or consequent to the
62 acquisition, construction, installation, and equipping of a
63 qualifying project.

64 4. The costs associated with the installation of fixtures
65 and equipment; surveys, including archaeological and
66 environmental surveys; site tests and inspections; subsurface
67 site work and excavation; removal of structures, roadways, and
68 other surface obstructions; filling, grading, paving, and
69 provisions for drainage, storm water retention, and installation
70 of utilities, including water, sewer, sewage treatment, gas,
71 electricity, communications, and similar facilities; and offsite
72 construction of utility extensions to the boundaries of the
73 property.

74
75 The term does ~~eligible capital costs shall~~ not include the cost
76 of any property previously owned or leased by the qualifying
77 business.

78 (d) "Income generated by or arising out of the qualifying
79 project" means the qualifying project's annual taxable income as
80 determined by generally accepted accounting principles and under
81 s. 220.13.

82 (e) "Jobs" means full-time equivalent positions, as that
83 term is consistent with terms used by the Agency for Workforce
84 Innovation and the United States Department of Labor for
85 purposes of unemployment tax administration and employment
86 estimation, resulting directly from a project in this state. The
87 term does not include temporary construction jobs involved in

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88 the construction of the project facility.

89 (f) "Office" means the Office of Tourism, Trade, and
90 Economic Development.

91 (g) "Qualifying business" means a business which
92 establishes a qualifying project in this state and which is
93 certified by the office to receive tax credits pursuant to this
94 section.

95 (h) "Qualifying project" means:

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

102 2. A new or expanded facility in this state which is
103 engaged in a target industry designated pursuant to the
104 procedure specified in s. 288.106(2)(t) and which is induced by
105 this credit to create or retain at least 1,000 jobs in this
106 state, provided that at least 100 of those jobs are new, pay an
107 annual average wage of at least 130 percent of the average
108 private sector wage in the area as defined in s. 288.106(2), and
109 make a cumulative capital investment of at least \$100 million
110 after July 1, 2005. Jobs may be considered retained only if
111 there is significant evidence that the loss of jobs is imminent.
112 Notwithstanding subsection (2), annual credits against the tax
113 imposed by this chapter may ~~shall~~ not exceed 50 percent of the
114 increased annual corporate income tax liability or the premium
115 tax liability generated by or arising out of a project
116 qualifying under this subparagraph. A facility that qualifies

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117 under this subparagraph for an annual credit against the tax
118 imposed by this chapter may take the tax credit for a period not
119 to exceed 5 years; or

120 3. A new or expanded headquarters facility in this state
121 which locates in an enterprise zone and brownfield area and is
122 induced by this credit to create at least 1,500 jobs which on
123 average pay at least 200 percent of the statewide average annual
124 private sector wage, as published by the Agency for Workforce
125 Innovation or its successor, and which new or expanded
126 headquarters facility makes a cumulative capital investment in
127 this state of at least \$250 million.

128 (2) (a) An annual credit against the tax imposed by this
129 chapter shall be granted to any qualifying business in an amount
130 equal to 5 percent of the eligible capital costs generated by a
131 qualifying project, for a period not to exceed 20 years
132 beginning with the commencement of operations of the project.
133 Unless assigned as described in this subsection, the tax credit
134 shall be granted against only the corporate income tax liability
135 or the premium tax liability generated by or arising out of the
136 qualifying project, and the sum of all tax credits provided
137 pursuant to this section may ~~shall~~ not exceed 100 percent of the
138 eligible capital costs of the project. Except as provided in
139 paragraph (d), a ~~In no event may any~~ credit granted under this
140 section may not be carried forward or backward by any qualifying
141 business with respect to a subsequent or prior year. The annual
142 tax credit granted under this section may ~~shall~~ not exceed the
143 following percentages of the annual corporate income tax
144 liability or the premium tax liability generated by or arising
145 out of a qualifying project:

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146 1. One hundred percent for a qualifying project which
147 results in a cumulative capital investment of at least \$100
148 million.

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

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

155 (b) A qualifying project that ~~which~~ results in a cumulative
156 capital investment of less than \$25 million is not eligible for
157 the capital investment tax credit. An insurance company claiming
158 a credit against premium tax liability under this program is
159 ~~shall not be~~ required to pay any additional retaliatory tax
160 levied pursuant to s. 624.5091 as a result of claiming such
161 credit. Because credits under this section are available to an
162 insurance company, s. 624.5091 does not limit such credit in any
163 manner.

164 (c) A qualifying business that establishes a qualifying
165 project that includes locating a new solar panel manufacturing
166 facility in this state that generates a minimum of 400 jobs
167 within 6 months after commencement of operations with an average
168 salary of at least \$50,000 may assign or transfer the annual
169 credit, or any portion thereof, granted under this section to
170 any other business. However, the amount of the tax credit that
171 may be transferred in any year is ~~shall be~~ the lesser of the
172 qualifying business's state corporate income tax liability for
173 that year, as limited by the percentages applicable under
174 paragraph (a) and as calculated before ~~prior to~~ taking any

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175 credit pursuant to this section, or the credit amount granted
176 for that year. A business receiving the transferred or assigned
177 credits may use the credits only in the year received, and the
178 credits may not be carried forward or backward. To perfect the
179 transfer, the transferor must ~~shall~~ provide the department with
180 a written transfer statement notifying the department of the
181 transferor's intent to transfer the tax credits to the
182 transferee; the date the transfer is effective; the transferee's
183 name, address, and federal taxpayer identification number; the
184 tax period; and the amount of tax credits to be transferred. The
185 department shall, upon receipt of a transfer statement
186 conforming to the requirements of this paragraph, provide the
187 transferee with a certificate reflecting the tax credit amounts
188 transferred. A copy of the certificate must be attached to each
189 tax return for which the transferee seeks to apply such tax
190 credits.

191 (d) Beginning in the 2011-2012 state fiscal year, if a
192 credit granted under this subsection is not fully used in any
193 one year because of insufficient tax liability on the part of
194 the qualifying business, the qualifying business is entitled to
195 a sales tax credit against its sales tax liability in an amount
196 equal to the difference between the annual tax credit granted
197 under this subsection, as computed pursuant to paragraph (a),
198 and the amount of the credit foregone by the qualifying business
199 because of insufficient tax liability. The sales tax credit
200 shall be granted against state sales and use taxes collected,
201 reported, and remitted pursuant to chapter 212 during the 12-
202 month period beginning on the date that the qualifying business
203 files its corporate income tax return for the year in which the

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204 credit granted under this subsection is not fully used.

205 1. The sales tax credit granted under this paragraph is
206 subject to the following:

207 a. A qualifying business that applies its sales tax credit
208 against its sales and use tax liability must make capital
209 investments in Florida, in addition to its cumulative capital
210 investment, in an amount equal to or greater than the applied
211 credit within 5 years after the date that the qualifying
212 business first applied the sales tax credit to its sales and use
213 tax return.

214 b. A qualifying business must annually provide to the
215 office, the President of the Senate, and the Speaker of the
216 House of Representatives a report listing the capital
217 investments made in each tax year of the business in which the
218 business claims a sales and use tax credit pursuant to this
219 paragraph and must provide a final summary report of all capital
220 investments made pursuant to requirements of this paragraph.

221 c. If the qualifying business fails to make the capital
222 investments pursuant to subparagraph (a)1. or if the business
223 fails to report its capital investments pursuant to subparagraph
224 (a)2., the qualifying business shall repay to the Department of
225 Revenue the difference between the sales tax credits received
226 and the amount of capital investments accounted for plus
227 interest as provided for delinquent taxes under chapter 212.

228 d. A qualifying business must have its headquarters in this
229 state, qualify for the capital investment tax credit pursuant to
230 subparagraph (a)1., and have received a signed letter of
231 approval to participate in the Capital Investment Tax Credit
232 Program between 2006 and 2008.

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233 2. The maximum amount of tax credits that the Department of
234 Revenue may approve to any one qualifying business under this
235 paragraph during any one state fiscal year is \$5 million.
236 Applications shall be processed in the order that completed
237 applications are received.

238 3. The office and the Department of Revenue may adopt rules
239 to administer this paragraph.

240 (3) (a) Notwithstanding subsection (2), an annual credit
241 against the tax imposed by this chapter shall be granted to a
242 qualifying business which establishes a qualifying project
243 pursuant to subparagraph (1)(h)3., in an amount equal to the
244 lesser of \$15 million or 5 percent of the eligible capital costs
245 made in connection with a qualifying project, for a period not
246 to exceed 20 years beginning with the commencement of operations
247 of the project. The tax credit shall be granted against the
248 corporate income tax liability of the qualifying business and as
249 further provided in paragraph (c). The total tax credit provided
250 pursuant to this subsection shall be equal to no more than 100
251 percent of the eligible capital costs of the qualifying project.

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

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262 (c) The credit granted under this subsection may be used in
263 whole or in part by the qualifying business or any corporation
264 that is either a member of that qualifying business's affiliated
265 group of corporations, is a related entity taxable as a
266 cooperative under subchapter T of the Internal Revenue Code, or,
267 if the qualifying business is an entity taxable as a cooperative
268 under subchapter T of the Internal Revenue Code, is related to
269 the qualifying business. Any entity related to the qualifying
270 business may continue to file as a member of a Florida-nexus
271 consolidated group pursuant to a prior election made under s.
272 220.131(1), Florida Statutes (1985), even if the parent of the
273 group changes due to a direct or indirect acquisition of the
274 former common parent of the group. Any credit can be used by any
275 of the affiliated companies or related entities referenced in
276 this paragraph to the same extent as it could have been used by
277 the qualifying business. However, any such use shall not operate
278 to increase the amount of the credit or extend the period within
279 which the credit must be used.

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

286 (5) Applications shall be reviewed and certified pursuant
287 to s. 288.061. The office, upon a recommendation by Enterprise
288 Florida, Inc., shall first certify a business as eligible to
289 receive tax credits pursuant to this section prior to the
290 commencement of operations of a qualifying project, and such

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291 certification shall be transmitted to the Department of Revenue.
292 Upon receipt of the certification, the Department of Revenue
293 shall enter into a written agreement with the qualifying
294 business specifying, at a minimum, the method by which income
295 generated by or arising out of the qualifying project will be
296 determined.

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

301 (7) ~~It shall be the responsibility of~~ The qualifying
302 business has the responsibility to affirmatively demonstrate to
303 the satisfaction of the Department of Revenue that such business
304 meets the job creation and capital investment requirements of
305 this section.

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

309 Section 2. This act shall take effect July 1, 2011.