

By Senator Ring

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1 A bill to be entitled
2 An act relating to economic development; providing
3 legislative purpose to promote the commercialization
4 of certain technologies by startup and early stage
5 companies in this state; amending s. 213.053, F.S.;
6 authorizing the Department of Revenue to share certain
7 confidential information with the Office of Tourism,
8 Trade, and Economic Development; amending s. 220.02,
9 F.S.; adding the tax credits available under s.
10 220.194, F.S., to the list of credits that may be
11 taken against state corporate income tax; amending s.
12 220.13, F.S.; redefining the term "adjusted federal
13 income" in relation to net operating losses
14 transferred and payments received for a certified tax
15 credit pursuant to the Micro-Targeted Technology
16 Commercialization Tax Credit Transfer Program;
17 amending s. 220.16, F.S.; providing for the allocation
18 of financial assistance pursuant to the Micro-Targeted
19 Technology Commercialization Tax Credit Transfer
20 Program as income in this state; creating s. 220.194,
21 F.S.; creating the Micro-Targeted Technology
22 Commercialization Tax Credit Transfer Program;
23 providing a short title, intent, goals, and
24 objectives; providing definitions; requiring that the
25 Institute for the Commercialization of Public Research
26 identify examples of micro-targeted technology and
27 compile a list of the technology for the Office of
28 Tourism, Trade, and Economic Development; requiring
29 the office to certify eligible companies for the

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30 transfer of corporate income tax net operating loss
31 amounts as certified credits; providing qualifications
32 and an application process and requirements; requiring
33 an application fee; providing for an application
34 deadline; requiring the office to grant or deny an
35 application within a specified time after receiving a
36 completed application; providing for calculating the
37 certified credit amount; providing a maximum amount
38 that may be transferred; providing a penalty;
39 requiring each certified company to file an annual
40 report with the office; requiring the office and the
41 Department of Revenue to adopt rules; providing an
42 appropriation; providing for an allocation of the
43 funds; providing for future repeal of the credit
44 transfer program; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Legislative purpose.—The purpose of this act is
49 to promote the commercialization of certain technologies by
50 startup and early stage Florida companies, and to create high-
51 wage jobs in these industry sectors.

52 Section 2. Paragraph (cc) is added to subsection (8) of
53 section 213.053, Florida Statutes, to read:

54 213.053 Confidentiality and information sharing.—

55 (8) Notwithstanding any other provision of this section,
56 the department may provide:

57 (cc) Information relative to tax credits taken under s.
58 220.194 to the Office of Tourism, Trade, and Economic

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Development.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 3. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.192, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, ~~and~~ those enumerated in s. 220.1896, and those enumerated in s. 220.194.

Section 4. Paragraph (b) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount

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88 equal to the taxpayer's taxable income as defined in subsection
89 (2), or such taxable income of more than one taxpayer as
90 provided in s. 220.131, for the taxable year, adjusted as
91 follows:

92 (b) *Subtractions.*—

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

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

97 b. The net capital loss allowable for federal income tax
98 purposes under s. 1212 of the Internal Revenue Code for the
99 taxable year,

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

103 d. The excess contributions deductions allowable for
104 federal income tax purposes under s. 404 of the Internal Revenue
105 Code for the taxable year, except that any net operating loss
106 transferred pursuant to s. 220.194 may not be deducted by the
107 seller.

108
109 However, a net operating loss and a capital loss shall never be
110 carried back as a deduction to a prior taxable year, but all
111 deductions attributable to such losses shall be deemed net
112 operating loss carryovers and capital loss carryovers,
113 respectively, and treated in the same manner, to the same
114 extent, and for the same time periods as are prescribed for such
115 carryovers in ss. 172 and 1212, respectively, of the Internal
116 Revenue Code.

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

119 a. Dividends treated as received from sources without the
120 United States, as determined under s. 862 of the Internal
121 Revenue Code.

122 b. All amounts included in taxable income under s. 78 or s.
123 951 of the Internal Revenue Code.

124

125 However, as to any amount subtracted under this subparagraph,
126 there shall be added to such taxable income all expenses
127 deducted on the taxpayer's return for the taxable year which are
128 attributable, directly or indirectly, to such subtracted amount.
129 Further, no amount shall be subtracted with respect to dividends
130 paid or deemed paid by a Domestic International Sales
131 Corporation.

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

138 4. There shall be subtracted from such taxable income any
139 amount of nonbusiness income included therein, including
140 payments received for a certified tax credit pursuant to s.
141 220.194.

142 5. There shall be subtracted any amount of taxes of foreign
143 countries allowable as credits for taxable years beginning on or
144 after September 1, 1985, under s. 901 of the Internal Revenue
145 Code to any corporation which derived less than 20 percent of

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146 its gross income or loss for its taxable year ended in 1984 from
147 sources within the United States, as described in s.
148 861(a)(2)(A) of the Internal Revenue Code, not including credits
149 allowed under ss. 902 and 960 of the Internal Revenue Code,
150 withholding taxes on dividends within the meaning of sub-
151 subparagraph 2.a., and withholding taxes on royalties, interest,
152 technical service fees, and capital gains.

153 6. Notwithstanding any other provision of this code, except
154 with respect to amounts subtracted pursuant to subparagraphs 1.
155 and 3., any increment of any apportionment factor which is
156 directly related to an increment of gross receipts or income
157 which is deducted, subtracted, or otherwise excluded in
158 determining adjusted federal income shall be excluded from both
159 the numerator and denominator of such apportionment factor.
160 Further, all valuations made for apportionment factor purposes
161 shall be made on a basis consistent with the taxpayer's method
162 of accounting for federal income tax purposes.

163 Section 5. Subsection (5) is added to section 220.16,
164 Florida Statutes, to read:

165 220.16 Allocation of nonbusiness income.—Nonbusiness income
166 shall be allocated as follows:

167 (5) The amount of financial assistance received in exchange
168 for transferring a net operating loss as authorized by s.
169 220.194 is allocable to this state.

170 Section 6. Section 220.194, Florida Statutes, is created to
171 read:

172 220.194 Micro-Targeted Technology Commercialization Tax
173 Credit Transfer Program; transfer of net loss carryforward as a
174 certified credit.—

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175 (1) This section may be cited as the "Micro-Targeted
176 Technology Commercialization Act."

177 (2) INTENT; GOALS AND OBJECTIVES.—It is the intent of the
178 Legislature that the Micro-Targeted Technology Commercialization
179 Tax Credit Transfer Program act as a catalyst for eligible
180 companies to accelerate their revenue and job growth and their
181 market penetration by monetizing their net operating losses into
182 transferable credits. The program's objectives include:

183 (a) Accelerating the entry of new technology-based products
184 into the marketplace;

185 (b) Producing additional technology-based jobs for this
186 state;

187 (c) Accelerating commercialization of micro-targeted
188 technologies in the biomedical and technical fields; and

189 (d) Encouraging the growth of high-quality, high-wage
190 biomedical and technology firms in this state.

191 (2) DEFINITIONS.—As used in s. 220.194, the term:

192 (a) "Certified credit" means the product of the net
193 operating loss generated in the current year apportioned to
194 Florida, multiplied by the corporate income tax rate imposed
195 during the year in which the loss occurred.

196 (b) "Certified micro-targeted technology company" means a
197 business entity that is registered with the Secretary of State,
198 is currently operating in this state, and is certified by the
199 office to trade certified credits based on the company's net
200 operating losses, pursuant to this section.

201 (c) "Department" means the Department of Revenue.

202 (d) "Institute" means the Institute for the
203 Commercialization of Public Research.

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204 (e) "Micro-targeted technology" means individual
205 components, technology, or processes that are crucial to the
206 development of larger or more complex biomedical or
207 technological devices, processes, or information systems.

208 (f) "Office" means the Office of Tourism, Trade, and
209 Economic Development.

210 (3) THE INSTITUTE FOR THE COMMERCIALIZATION OF PUBLIC
211 RESEARCH.—The Institute for the Commercialization of Public
212 Research or other Florida research-based consortium shall
213 identify examples of micro-targeted technology and compile a
214 list that is updated annually to add new technologies or delete
215 those technologies that are no longer applicable. The office
216 shall adopt this list as a rule.

217 (4) QUALIFICATIONS FOR CERTIFICATION.—A company seeking to
218 transfer a certified credit shall be certified as a micro-
219 targeted technology company by the office if it timely files a
220 completed application and meets the requirements of this
221 subsection. For purposes of this subsection, all conditions in
222 paragraphs (a) through (g) must be met no later than the date
223 the application is filed with the office. All other requirements
224 in this subsection must be satisfied before the company received
225 certified credits. In order to be certified, a micro-targeted
226 technology company must demonstrate that it:

227 (a) Is registered with the Secretary of State to operate in
228 this state and is operating in Florida.

229 (b) Is primarily engaged in developing, manufacturing,
230 producing, or providing micro-targeted technology for commercial
231 or public purposes.

232 (c) Has fewer than 100 full-time employees worldwide,

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233 including full-time employees leased to the applicant, of which
234 at least 75 percent work full time in this state at the time the
235 transfer of certified credits is first allowed.

236 (d) Has been audited by an independent certified public
237 accountant, and:

238 1. Has not had positive net income in any of the 2 previous
239 years of ongoing operations;

240 2. Has reported a net operating loss in any of the 2
241 previous years of operation; and

242 3. Is not at least 50 percent owned or controlled, directly
243 or indirectly, by another corporation that has demonstrated
244 positive net income in any of the 2 previous years of ongoing
245 operations, or is not part of a consolidated group of affiliated
246 corporations, as filed for federal income tax purposes, which in
247 the aggregate demonstrated positive net income in any of the 2
248 previous years of ongoing operations.

249 (e) Has at least one active application for a patent under
250 35 U.S.C. s. 111(a) on file with the United States Patent and
251 Trademark Office.

252 (f) Has received research grants from governmental
253 entities, foundations, or other private entities, or received
254 financial assistance from investors.

255 (g) Has an established business plan that describes its
256 commercialization strategy, a business-development plan that
257 includes revenue projections and a strategy for becoming
258 profitable, and a timeline for development which addresses
259 revenue growth and job creation in this state.

260 (h) Has certified that:

261 1. It will not transfer a certified credit in exchange for

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262 private financial assistance in an amount that is less than 75
263 percent of the certified credit;

264 2. All proceeds from the transfer will be expended to
265 support the operation or expansion of the company's business
266 activity in this state; and

267 3. Upon transfer of a certified credit, it will notify the
268 office of the amount within 30 days after each certified credit
269 is transferred, the amount of the financial compensation for the
270 credit received, and the identity of the purchaser of the
271 certified credit.

272 (5) APPLICATION FOR CERTIFICATION.—

273 (a) A completed application must be filed with the office
274 on or after 2 p.m., on the first business day of July commencing
275 in 2011. The office may investigate the qualifications of each
276 company applicant and may require by rule the applicant to
277 provide such evidence of its qualification as is necessary to
278 assure compliance with the requirements of this section,
279 including, but not limited to, the state corporate income tax
280 return supporting the request for certification of a certified
281 credit, audited financial statements, federal tax returns, and
282 state and federal employment filings.

283 (b) The office shall require a nonrefundable application
284 fee of \$100 per application submitted. The department shall
285 cooperate with the office in its review of the applications.

286 (c) The office shall grant or deny an application in full
287 or in part within 90 days after receiving a completed
288 application containing the necessary information, including
289 payment of the application fee. If the office denies any part of
290 the application, it shall inform the applicant of the grounds

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291 for the denial.

292 (d) This section does not create a presumption that a
293 company applicant will be approved by the office to transfer its
294 certified credits. However, the office may issue a nonbinding
295 opinion letter, upon the request of a prospective applicant, as
296 to its eligibility and the potential amount of certified credits
297 available.

298 (6) CALCULATION OF CERTIFIED CREDIT TRANSFER AMOUNT AND
299 LIMITATIONS.—When submitting an application for certification, a
300 company shall state the amount of the net operating loss,
301 including any net operating loss carryover, it requests to be
302 transferred as a certified credit. To the extent allowed as a
303 deduction in this state, a reported net operating loss not
304 otherwise taken may be certified by the office for transfer by a
305 certified micro-targeted technology company in exchange for
306 private financial assistance from a purchaser as follows:

307 (a) The net operating loss shall be transferred as a
308 certified credit.

309 (b) The maximum amount of certified credits which a micro-
310 targeted technology company may transfer during its existence
311 may not exceed \$1 million.

312 (c) Once the office has certified the transfer of total
313 certified credits that may be claimed during a state fiscal year
314 in a cumulative amount of \$3 million, the office may not approve
315 the transfer of any additional credits that may be taken in that
316 state fiscal year.

317 (d) The certified micro-targeted technology company is
318 liable if, after a transfer, the net operating loss is adjusted
319 by amendment or as a result of any other recomputation or

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320 redetermination of federal or Florida taxable income or loss.
321 The certified micro-targeted technology company is also liable
322 for a penalty equal to the amount of the credit transferred,
323 reduced in proportion to the amount of the net operating loss
324 certified for transfer over the amount of the certified net
325 operating loss disallowed.

326 (e) The applicant and its successors shall maintain all
327 records necessary to support the reported amount of certified
328 credits.

329 (7) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.—

330 (a) The certified credit must be reported as a credit
331 against tax due by the unaffiliated corporate purchaser on the
332 next tax return due to be filed by the purchaser, but in no case
333 may it be reported later than 1 year after the date of transfer.

334 (b) If the certified credit is larger than the amount owed
335 to the state on the tax return for the period in which the
336 credit is claimed, after applying the other credits and unused
337 credit carryovers in the order provided in s. 220.02(8), the
338 amount of the credit for that period shall be the amount owed to
339 the state on that tax return. Unused certified credit amounts
340 remaining may not be carried forward.

341 (c) The purchaser of a certified credit amount may not
342 further sell, or otherwise transfer, the certified credit
343 amount.

344 (d) It is the responsibility of the certified micro-
345 targeted technology company that transferred the certified
346 credit amount to notify the office, within 30 days after
347 transfer, of the amount of each certified credit transferred,
348 the amount of the financial assistance received, and the

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349 identity of the purchaser of the certified credit. The office
350 shall certify to the department the same information within 14
351 working days.

352 (8) REPORTING REQUIREMENT.—Each company that is certified
353 to transfer its certified credit must provide the office with an
354 annual report on its development covering the year after it
355 receives funds from transferring its certified credits. The
356 report must include the company's commercialization strategy;
357 business development plan; timeline for development; actual
358 revenue and revenue projections, both total and within Florida
359 only; and actual employment and employment projections, both
360 total and within Florida only. The report is due January 3 each
361 applicable year.

362 (9) RULEMAKING AUTHORITY.—

363 (a) The office shall adopt rules to administer this
364 section. The rules must establish the criteria for qualified
365 technology research and experimental development, production, or
366 provision of technology for commercial or public purposes; the
367 format of application forms; and the procedures to implement the
368 program.

369 (b) The department may adopt rules to administer this
370 section.

371 Section 7. (1) The sum of \$8 million is transferred from
372 the Florida Opportunity Fund to the Economic Development Trust
373 Fund for the purpose of funding the Micro-Targeted Technology
374 Commercialization Credit Transfer Program. Notwithstanding s.
375 216.301, Florida Statutes, and pursuant to s. 216.351, Florida
376 Statutes, the unexpended balance of this appropriation at the
377 end of the fiscal year shall remain in the trust fund and shall

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378 be available for carrying out the purposes of the programs in
379 future years.

380 (2) Of that amount:

381 (a) The sum of \$2 million is appropriated to the Institute
382 for the Commercialization of Public Research for the 2011-2012
383 fiscal year to support its operations.

384 (b) The sum of \$5.8 million shall be retained in the
385 Economic Development Trust Fund to be used to reimburse the
386 General Revenue Fund so as to defray the cost to the state of
387 the net operating loss tax credits created in s. 220.194,
388 Florida Statutes.

389 (c) The sum of \$200,000 shall be retained in the Economic
390 Development Trust Fund to be drawn, as needed, to pay the
391 administrative costs incurred by the Office of Tourism, Trade,
392 and Economic Development associated with implementing the credit
393 transfer program.

394 Section 8. Section 220.194, Florida Statutes, is repealed
395 effective June 30, 2015, unless reviewed and saved from repeal
396 through reenactment by the Legislature.

397 Section 9. This act shall take effect upon becoming a law.