

1 A bill to be entitled
2 An act relating to economic development; creating the
3 Commercialization Credit Transfer Program; providing
4 legislative findings that it is in the state's interest to
5 promote the commercialization of products and services
6 developed by technology companies; amending s. 213.053,
7 F.S.; authorizing the Department of Revenue to share
8 certain confidential information with the Office of
9 Tourism, Trade, and Economic Development; amending s.
10 220.02, F.S.; adding the certified credits available under
11 s. 220.194, F.S., to the list of credits that may be taken
12 against state corporate income tax; amending s. 220.13,
13 F.S.; redefining the term "adjusted federal income" in
14 relation to net operating losses transferred and payments
15 received for a certified credit pursuant to the
16 Commercialization Credit Transfer Program; amending s.
17 220.16, F.S.; providing for the allocation of financial
18 assistance pursuant to the Commercialization Credit
19 Transfer Program as income in this state; creating s.
20 220.194, F.S.; creating the Commercialization Credit
21 Transfer Program; providing a purpose, intent, goals, and
22 objectives; providing definitions; requiring the office to
23 certify eligible companies for the transfer of corporate
24 income tax net operating loss amounts as certified
25 credits; providing qualifications and an application
26 process and requirements; requiring an application fee;
27 providing for an application deadline; requiring the
28 office to grant or deny an application within a specified

29 | time after receiving a completed application; providing
 30 | for calculating the certified credit amount; providing a
 31 | maximum amount that may be transferred; providing a
 32 | penalty; requiring each certified company to file an
 33 | annual report with the office; requiring the office to
 34 | create an annual report; requiring the office to adopt
 35 | rules; authorizing the Department of Revenue to adopt
 36 | rules; providing for future repeal of the
 37 | Commercialization Credit Transfer Program; providing
 38 | appropriations; providing an effective date.

39 |

40 | Be It Enacted by the Legislature of the State of Florida:

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42 | Section 1. Legislative findings.—The Legislature finds
 43 | that it is in the best interests of this state to promote the
 44 | commercialization of products and services developed by
 45 | technology companies in this state which can lead to the
 46 | creation of high-wage and high-skilled jobs. One mechanism to
 47 | this end is the Commercialization Credit Transfer Program.

48 | Section 2. Paragraph (dd) is added to subsection (8) of
 49 | section 213.053, Florida Statutes, as amended by section 3 of
 50 | chapter 2010-280, Laws of Florida, to read:

51 | 213.053 Confidentiality and information sharing.—

52 | (8) Notwithstanding any other provision of this section,
 53 | the department may provide:

54 | (dd) Information relative to tax credits taken under s.
 55 | 220.194 to the Office of Tourism, Trade, and Economic
 56 | Development.

57
 58 Disclosure of information under this subsection shall be
 59 pursuant to a written agreement between the executive director
 60 and the agency. Such agencies, governmental or nongovernmental,
 61 shall be bound by the same requirements of confidentiality as
 62 the Department of Revenue. Breach of confidentiality is a
 63 misdemeanor of the first degree, punishable as provided by s.
 64 775.082 or s. 775.083.

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

67 220.02 Legislative intent.—

68 (8) It is the intent of the Legislature that credits
 69 against either the corporate income tax or the franchise tax be
 70 applied in the following order: those enumerated in s. 631.828,
 71 those enumerated in s. 220.191, those enumerated in s. 220.181,
 72 those enumerated in s. 220.183, those enumerated in s. 220.182,
 73 those enumerated in s. 220.1895, those enumerated in s. 221.02,
 74 those enumerated in s. 220.184, those enumerated in s. 220.186,
 75 those enumerated in s. 220.1845, those enumerated in s. 220.19,
 76 those enumerated in s. 220.185, those enumerated in s. 220.1875,
 77 those enumerated in s. 220.192, those enumerated in s. 220.193,
 78 those enumerated in s. 288.9916, those enumerated in s.
 79 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
 80 enumerated in s. 220.194.

81 Section 4. Paragraph (b) of subsection (1) of section
 82 220.13, Florida Statutes, is amended to read:

83 220.13 "Adjusted federal income" defined.—

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

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

89 (b) *Subtractions.*—

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

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

94 b. The net capital loss allowable for federal income tax
 95 purposes under s. 1212 of the Internal Revenue Code for the
 96 taxable year,

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

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

105
 106 However, a net operating loss and a capital loss shall never be
 107 carried back as a deduction to a prior taxable year, but all
 108 deductions attributable to such losses shall be deemed net
 109 operating loss carryovers and capital loss carryovers,
 110 respectively, and treated in the same manner, to the same
 111 extent, and for the same time periods as are prescribed for such
 112 carryovers in ss. 172 and 1212, respectively, of the Internal

113 Revenue Code.

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

116 a. Dividends treated as received from sources without the
117 United States, as determined under s. 862 of the Internal
118 Revenue Code.

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

121
122 However, as to any amount subtracted under this subparagraph,
123 there shall be added to such taxable income all expenses
124 deducted on the taxpayer's return for the taxable year which are
125 attributable, directly or indirectly, to such subtracted amount.
126 Further, no amount shall be subtracted with respect to dividends
127 paid or deemed paid by a Domestic International Sales
128 Corporation.

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

135 4. There shall be subtracted from such taxable income any
136 amount of nonbusiness income included therein, including
137 payments received for a certified credit pursuant to s. 220.194.

138 5. There shall be subtracted any amount of taxes of
139 foreign countries allowable as credits for taxable years
140 beginning on or after September 1, 1985, under s. 901 of the

141 Internal Revenue Code to any corporation which derived less than
 142 20 percent of its gross income or loss for its taxable year
 143 ended in 1984 from sources within the United States, as
 144 described in s. 861(a)(2)(A) of the Internal Revenue Code, not
 145 including credits allowed under ss. 902 and 960 of the Internal
 146 Revenue Code, withholding taxes on dividends within the meaning
 147 of sub-subparagraph 2.a., and withholding taxes on royalties,
 148 interest, technical service fees, and capital gains.

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

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

162 220.16 Allocation of nonbusiness income.—Nonbusiness
 163 income shall be allocated as follows:

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

167 Section 6. Section 220.194, Florida Statutes, is created
 168 to read:

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169 220.194 Commercialization Credit Transfer Program;
170 transfer of net loss carryforward as a certified credit.-

171 (1) PURPOSE; GOALS AND OBJECTIVES.-It is the intent of the
172 Legislature that the Commercialization Credit Transfer Program
173 act as a catalyst for eligible technology companies to
174 accelerate their revenue and job growth and their market
175 penetration by monetizing their net operating losses into
176 transferable credits. The program's objectives include:

177 (a) Accelerating the entry of new technology-based
178 products and services into the marketplace;

179 (b) Producing high-wage, technology-based jobs for this
180 state; and

181 (c) Encouraging the expansion of high-impact technology-
182 based firms in this state.

183 (2) DEFINITIONS.-As used in this section, the term:

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

188 (b) "Department" means the Department of Revenue.

189 (c) "Office" means the Office of Tourism, Trade, and
190 Economic Development.

191 (3) ELIGIBILITY.-A company seeking to transfer a certified
192 credit shall be certified by the office if it timely files a
193 completed application and meets the requirements of this
194 subsection. For purposes of this subsection, all conditions in
195 paragraphs (a)-(g) must be met by the date that the application
196 is filed with the office. In order to be certified, a company

197 must demonstrate that it:

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

200 (b) Is primarily engaged in developing, manufacturing,
 201 producing, or providing technology for commercial or public
 202 purposes and has a federally assigned NAICS code identifying the
 203 company as such.

204 (c) Has fewer than 100 full-time employees worldwide,
 205 including full-time employees leased to the applicant, of which
 206 at least 75 percent work full-time in this state at the time the
 207 transfer of certified credits is first allowed.

208 (d) Has been audited by an independent certified public
 209 accountant, and:

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

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

214 3. Is not at least 50 percent owned or controlled,
 215 directly or indirectly, by another corporation that has
 216 demonstrated positive net income in any of the 2 previous years
 217 of ongoing operations, or is not part of a consolidated group of
 218 affiliated corporations, as filed for federal income tax
 219 purposes, which in the aggregate demonstrated positive net
 220 income in any of the 2 previous years of ongoing operations.

221 (e) Has at least one active application for a patent under
 222 35 U.S.C. s. 111(a) on file with the United States Patent and
 223 Trademark Office.

224 (f) Has received research grants from governmental

225 entities, foundations, or other private entities, or received
226 financial assistance from investors.

227 (g) Has an established business plan that describes its
228 commercialization strategy, a business-development plan that
229 includes revenue projections and a strategy for becoming
230 profitable, and a timeline for development which addresses
231 revenue growth and job creation in this state.

232 (h) Has certified that:

233 1. It will not transfer a certified credit in exchange for
234 private financial assistance in an amount that is less than 80
235 percent of the certified credit;

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

239 3. Upon transfer of a certified credit, it will notify the
240 office of the amount within 30 days after each certified credit
241 is transferred, the amount of the financial compensation for the
242 credit received, and the identity of the purchaser of the
243 certified credit.

244 (4) APPLICATION FOR CERTIFICATION.—

245 (a) A completed application must be filed with the office
246 on or after 2 p.m., on the first business day of August
247 commencing in 2011. The office may investigate the
248 qualifications of each company applicant and may require by rule
249 the applicant to provide such evidence of its qualification as
250 is necessary to ensure compliance with the requirements of this
251 section, including, but not limited to, the state corporate
252 income tax return supporting the request for certification of a

253 certified credit, audited financial statements, federal tax
254 returns, and state and federal employment filings.

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

258 (c) The office shall grant or deny an application in full
259 or in part within 90 days after receiving a completed
260 application containing the necessary information, including
261 payment of the application fee. If the office denies any part of
262 the application, it shall inform the applicant of the grounds
263 for the denial.

264 (d) This section does not create a presumption that a
265 company applicant will be approved by the office to transfer its
266 certified credits. However, the office may issue a nonbinding
267 opinion letter, upon the request of a prospective applicant, as
268 to its eligibility and the potential amount of certified credits
269 available.

270 (5) CALCULATION OF CERTIFIED CREDIT TRANSFER AMOUNT AND
271 LIMITATIONS.—When submitting an application for certification, a
272 company shall state the amount of the net operating loss,
273 including any net operating loss carryover, which it requests to
274 be transferred as a certified credit. To the extent allowed as a
275 deduction in this state, a reported net operating loss not
276 otherwise taken may be certified by the office for transfer by a
277 certified company in exchange for private financial assistance
278 from a purchaser as follows:

279 (a) The net operating loss shall be transferred as a
280 certified credit.

281 (b) The maximum amount of certified credits which a
282 company may transfer during its existence may not exceed \$1
283 million.

284 (c) The office may not certify the transfer of more than
285 \$3 million in certified credits during a state fiscal year.

286 (d) The certified company is liable if, after a transfer,
287 its net operating loss is adjusted by amendment or as a result
288 of any other recomputation or redetermination of federal or
289 Florida taxable income or loss. The certified company is also
290 liable for a penalty equal to the amount of the credit
291 transferred, reduced in proportion to the amount of the net
292 operating loss certified for transfer over the amount of the
293 certified net operating loss disallowed.

294 (e) The certified company and its successors shall
295 maintain all records necessary to support the reported amount of
296 certified credits.

297 (6) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.—

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

302 (b) If the certified credit is larger than the amount owed
303 the state on the tax return for the time period in which the
304 credit is claimed, after applying the other credits and unused
305 credit carryovers in the order provided in s. 220.02(8), the
306 amount of the credit for that time period shall be the amount
307 owed the state on that tax return. Unused certified credit
308 amounts remaining may not be carried forward.

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309 (c) The purchaser of a certified credit amount may not
310 further sell, or otherwise transfer, the certified credit
311 amount.

312 (d) It is the responsibility of the certified company that
313 transferred the certified credit amount to notify the office,
314 within 30 days after transfer, of the amount of each certified
315 credit transferred, the amount of the financial assistance
316 received, and the identity of the purchaser of the certified
317 credit. The office shall certify to the department the same
318 information within 14 working days.

319 (7) REPORTING REQUIREMENTS.—

320 (a) Each company that is certified to transfer its
321 certified credit must provide the office with an annual report
322 on its development covering the year after it receives funds
323 from transferring its certified credits. The report must include
324 a summary of the company's commercialization strategy; business
325 development plan; timeline for development; and actual
326 employment and employment projections, both total and within
327 this state only. The report is due January 3 of each applicable
328 year.

329 (b) The office shall provide a report by February 1 each
330 year to the Governor, the President of the Senate, and the
331 Speaker of the House of Representatives containing a synopsis of
332 the individual company reports described in paragraph (a).

333 (8) RULEMAKING AUTHORITY.—

334 (a) The office shall adopt rules to administer this
335 section. The rules must establish the criteria for qualified
336 technology research and experimental development, production, or

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337 provision of technology for commercial or public purposes; the
338 format of application forms; and the procedures to implement the
339 program.

340 (b) The department may adopt rules to administer this
341 section.

342 (9) This section is repealed effective June 30, 2016,
343 unless reviewed and saved from repeal through reenactment by the
344 Legislature.

345 Section 7. (1) The sum of \$.... is appropriated to the
346 Economic Development Trust Fund to be drawn, as needed, to pay
347 the administrative costs incurred by the Office of Tourism,
348 Trade, and Economic Development and associated with implementing
349 the commercialization credit transfer program.

350 (2) The sum of \$.... is appropriated to the Department of
351 Revenue to pay the initial administrative costs associated with
352 amending tax forms, modifying computer software, creating a
353 tracking system for the transferred credits, and otherwise
354 implementing the commercialization credit transfer program.

355 Section 8. This act shall take effect July 1, 2011.