

HB 873

2011

1 A bill to be entitled
2 An act relating to corporate tax credits for spaceflight
3 projects; amending s. 14.2015, F.S.; authorizing the
4 Office of Tourism, Trade, and Economic Development to
5 administer corporate income tax credits for spaceflight
6 projects; amending s. 213.053, F.S.; authorizing the
7 Department of Revenue to share information relating to
8 corporate income tax credits for spaceflight projects with
9 the Office of Tourism, Trade, and Economic Development;
10 amending s. 220.02, F.S.; revising the order in which
11 credits against the corporate income tax or franchise tax
12 may be taken to include credits for spaceflight projects;
13 amending s. 220.13, F.S.; requiring that the amount taken
14 as a credit for a spaceflight project be added to taxable
15 income; prohibiting a deduction from taxable income for
16 any net operating loss taken as a credit against corporate
17 income taxes or transferred; amending s. 220.16, F.S.;
18 requiring that the amount of payments received in exchange
19 for transferring a net operating loss for spaceflight
20 projects be allocated to the state; creating s. 220.194,
21 F.S.; providing a short title; providing legislative
22 purpose; defining terms; authorizing a certified
23 spaceflight business to take or transfer corporate income
24 tax credits related to spaceflight projects carried out in
25 this state; specifying tax credit amounts and business
26 eligibility criteria; providing limitations; requiring a
27 business to demonstrate to the satisfaction of the office
28 and the department its eligibility to claim a tax credit;

Page 1 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0873-00

HB 873

2011

29 requiring a business to submit an application to the
30 office for approval to earn credits; specifying the
31 required contents of the application; requiring the office
32 to approve or deny an application within 60 days after
33 receipt; specifying the approval process; requiring a
34 spaceflight business to submit an application for
35 certification to the office; specifying the required
36 contents of an application for certification; specifying
37 the approval process; requiring the office to submit a
38 copy of an approved certification to the department;
39 providing procedures for transferring a tax credit to a
40 taxpayer; authorizing the department to perform audits and
41 investigations necessary to verify the accuracy of returns
42 relating to the tax credit; specifying circumstances under
43 which the office may revoke or modify a certification that
44 grants eligibility for tax credits; requiring a certified
45 spaceflight business to file an amended return and pay any
46 required tax within 60 days after receiving notice that
47 previously approved tax credits have been revoked or
48 modified; authorizing the department to assess additional
49 taxes, interest, or penalties; authorizing the office and
50 the department to adopt rules; requiring the office to
51 submit an annual report to the Governor and Legislature
52 regarding the Florida Space Business Incentives Act;
53 providing for application; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:
56

HB 873

2011

57 Section 1. Paragraph (f) of subsection (2) of section
 58 14.2015, Florida Statutes, is amended to read:

59 14.2015 Office of Tourism, Trade, and Economic
 60 Development; creation; powers and duties.—

61 (2) The purpose of the Office of Tourism, Trade, and
 62 Economic Development is to assist the Governor in working with
 63 the Legislature, state agencies, business leaders, and economic
 64 development professionals to formulate and implement coherent
 65 and consistent policies and strategies designed to provide
 66 economic opportunities for all Floridians. To accomplish such
 67 purposes, the Office of Tourism, Trade, and Economic Development
 68 shall:

69 (f)~~1.~~ Administer the Florida Enterprise Zone Act under ss.
 70 290.001-290.016, the community contribution tax credit program
 71 under ss. 220.183 and 624.5105, the tax refund program for
 72 qualified target industry businesses under s. 288.106, the tax-
 73 refund program for qualified defense contractors and space
 74 flight business contractors under s. 288.1045, contracts for
 75 transportation projects under s. 288.063, the sports franchise
 76 facility programs under ss. 288.1162 and 288.11621, the
 77 professional golf hall of fame facility program under s.
 78 288.1168, the expedited permitting process under s. 403.973, the
 79 Rural Community Development Revolving Loan Fund under s.
 80 288.065, the Regional Rural Development Grants Program under s.
 81 288.018, the Certified Capital Company Act under s. 288.99, the
 82 Florida State Rural Development Council, the Rural Economic
 83 Development Initiative, the corporate income tax credits for
 84 spaceflight projects under s. 220.194, and other programs that

85 are specifically assigned to the office by law, by the
 86 appropriations process, or by the Governor.

87 1. Notwithstanding any other provisions of law, the office
 88 may expend interest earned from the investment of program funds
 89 deposited in the Grants and Donations Trust Fund to contract for
 90 the administration of the programs, or portions of the programs,
 91 enumerated in this paragraph or assigned to the office by law,
 92 by the appropriations process, or by the Governor. Such
 93 expenditures are ~~shall be~~ subject to review under chapter 216.

94 2. The office may enter into contracts in connection with
 95 the fulfillment of its duties concerning the Florida First
 96 Business Bond Pool under chapter 159, tax incentives under
 97 chapters 212 and 220, tax incentives under the Certified Capital
 98 Company Act in chapter 288, foreign offices under chapter 288,
 99 the Enterprise Zone program under chapter 290, the Seaport
 100 Employment Training program under chapter 311, the Florida
 101 Professional Sports Team License Plates under chapter 320,
 102 Spaceport Florida under chapter 331, Expedited Permitting under
 103 chapter 403, and in carrying out other functions that are
 104 specifically assigned to the office by law, by the
 105 appropriations process, or by the Governor.

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

108 213.053 Confidentiality and information sharing.—

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

111 (cc) Information relating to tax credits taken under s.
 112 220.194 to the Office of Tourism, Trade, and Economic

HB 873

2011

113 Development or to Space Florida.

114

115 Disclosure of information under this subsection shall be
 116 pursuant to a written agreement between the executive director
 117 and the agency. Such agencies, governmental or nongovernmental,
 118 shall be bound by the same requirements of confidentiality as
 119 the Department of Revenue. Breach of confidentiality is a
 120 misdemeanor of the first degree, punishable as provided by s.
 121 775.082 or s. 775.083.

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

124 220.02 Legislative intent.—

125 (8) It is the intent of the Legislature that credits
 126 against ~~either~~ the corporate income tax or the franchise tax be
 127 applied in the following order: those enumerated in s. 631.828,
 128 those enumerated in s. 220.191, those enumerated in s. 220.181,
 129 those enumerated in s. 220.183, those enumerated in s. 220.182,
 130 those enumerated in s. 220.1895, those enumerated in s. 221.02,
 131 those enumerated in s. 220.184, those enumerated in s. 220.186,
 132 those enumerated in s. 220.1845, those enumerated in s. 220.19,
 133 those enumerated in s. 220.185, those enumerated in s. 220.1875,
 134 those enumerated in s. 220.192, those enumerated in s. 220.193,
 135 those enumerated in s. 288.9916, those enumerated in s.
 136 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
 137 enumerated in s. 220.194.

138 Section 4. Paragraphs (a) and (b) of subsection (1) of
 139 section 220.13, Florida Statutes, are amended to read:

140 220.13 "Adjusted federal income" defined.—

HB 873

2011

141 (1) The term "adjusted federal income" means an amount
 142 equal to the taxpayer's taxable income as defined in subsection
 143 (2), or such taxable income of more than one taxpayer as
 144 provided in s. 220.131, for the taxable year, adjusted as
 145 follows:

146 (a) Additions.—~~The following~~ ~~There~~ shall be added to such
 147 taxable income:

148 1. The amount of any tax upon or measured by income,
 149 excluding taxes based on gross receipts or revenues, paid or
 150 accrued as a liability to the District of Columbia or any state
 151 of the United States which is deductible from gross income in
 152 the computation of taxable income for the taxable year.

153 2. The amount of interest which is excluded from taxable
 154 income under s. 103(a) of the Internal Revenue Code or any other
 155 federal law, less the associated expenses disallowed in the
 156 computation of taxable income under s. 265 of the Internal
 157 Revenue Code or any other law, excluding 60 percent of any
 158 amounts included in alternative minimum taxable income, as
 159 defined in s. 55(b)(2) of the Internal Revenue Code, if the
 160 taxpayer pays tax under s. 220.11(3).

161 3. In the case of a regulated investment company or real
 162 estate investment trust, an amount equal to the excess of the
 163 net long-term capital gain for the taxable year over the amount
 164 of the capital gain dividends attributable to the taxable year.

165 4. That portion of the wages or salaries paid or incurred
 166 for the taxable year which is equal to ~~the amount of~~ the credit
 167 allowable for the taxable year under s. 220.181. This
 168 subparagraph expires ~~shall expire~~ on the date specified in s.

HB 873

2011

169 290.016 for the expiration of the Florida Enterprise Zone Act.

170 5. That portion of the ad valorem school taxes paid or
 171 incurred for the taxable year which is equal to ~~the amount of~~
 172 the credit allowable for the taxable year under s. 220.182. This
 173 subparagraph expires ~~shall expire~~ on the date specified in s.
 174 290.016 for the expiration of the Florida Enterprise Zone Act.

175 6. The amount of emergency excise tax paid or accrued as a
 176 liability to this state under chapter 221 which tax is
 177 deductible from gross income in the computation of taxable
 178 income for the taxable year.

179 7. That portion of assessments to fund a guaranty
 180 association incurred for the taxable year which is equal to ~~the~~
 181 ~~amount of~~ the credit allowable for the taxable year.

182 8. In the case of a nonprofit corporation that ~~which~~ holds
 183 a pari-mutuel permit and ~~which~~ is exempt from federal income tax
 184 as a farmers' cooperative, an amount equal to the excess of the
 185 gross income attributable to the pari-mutuel operations over the
 186 attributable expenses for the taxable year.

187 9. The amount taken as a credit for the taxable year under
 188 s. 220.1895.

189 10. Up to nine percent of the eligible basis of any
 190 designated project which is equal to the credit allowable for
 191 the taxable year under s. 220.185.

192 11. The amount taken as a credit for the taxable year
 193 under s. 220.1875. The addition in this subparagraph is intended
 194 to ensure that the same amount is not allowed for the tax
 195 purposes of this state as both a deduction from income and a
 196 credit against the tax. This addition is not intended to result

197 | in adding the same expense back to income more than once.

198 | 12. The amount taken as a credit for the taxable year
199 | under s. 220.192.

200 | 13. The amount taken as a credit for the taxable year
201 | under s. 220.193.

202 | 14. Any portion of a qualified investment, as defined in
203 | s. 288.9913, which is claimed as a deduction by the taxpayer and
204 | taken as a credit against income tax pursuant to s. 288.9916.

205 | 15. The costs to acquire a tax credit pursuant to s.
206 | 288.1254(5) which ~~that~~ are deducted from or otherwise reduce
207 | federal taxable income for the taxable year.

208 | 16. The amount taken as a credit for the taxable year
209 | pursuant to s. 220.194.

210 | (b) *Subtractions.*—

211 | 1. The following ~~There~~ shall be subtracted from such
212 | taxable income:

213 | a. The net operating loss deduction allowable for federal
214 | income tax purposes under s. 172 of the Internal Revenue Code
215 | for the taxable year, except that any net operating loss that is
216 | taken as a credit to corporate income taxes owed or that is
217 | transferred pursuant to s. 220.194(3) (b) may not be deducted by
218 | the seller;

219 | b. The net capital loss allowable for federal income tax
220 | purposes under s. 1212 of the Internal Revenue Code for the
221 | taxable year;~~;~~

222 | c. The excess charitable contribution deduction allowable
223 | for federal income tax purposes under s. 170(d) (2) of the
224 | Internal Revenue Code for the taxable year;~~;~~ and

HB 873

2011

225 d. The excess contributions deductions allowable for
 226 federal income tax purposes under s. 404 of the Internal Revenue
 227 Code for the taxable year.

228
 229 However, a net operating loss and a capital loss may not ~~shall~~
 230 ~~never~~ be carried back as a deduction to a prior taxable year,
 231 but all deductions attributable to such losses shall be deemed
 232 net operating loss carryovers and capital loss carryovers,
 233 respectively, and treated in the same manner, to the same
 234 extent, and for the same time periods as are prescribed for ~~such~~
 235 carryovers in ss. 172 and 1212, respectively, of the Internal
 236 Revenue Code.

237 2. The following ~~There~~ shall be subtracted from such
 238 taxable income ~~any amount~~ to the extent included therein ~~the~~
 239 ~~following~~:

240 a. Dividends treated as received from sources without the
 241 United States, as determined under s. 862 of the Internal
 242 Revenue Code.

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

245
 246 However, as to any amount subtracted under this subparagraph,
 247 there shall be added to such taxable income all expenses
 248 deducted on the taxpayer's return for the taxable year which are
 249 attributable, directly or indirectly, to such subtracted amount.
 250 Further, no amount may ~~shall~~ be subtracted with respect to
 251 dividends paid or deemed paid by a Domestic International Sales
 252 Corporation.

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

260 4. ~~There shall be subtracted from such taxable income~~ Any
 261 amount of nonbusiness income included therein shall be
 262 subtracted from such taxable income.

263 5. ~~There shall be subtracted~~ Any amount of taxes of
 264 foreign countries allowable as credits for taxable years
 265 beginning on or after September 1, 1985, under s. 901 of the
 266 Internal Revenue Code to any corporation that ~~which~~ derived less
 267 than 20 percent of its gross income or loss for its taxable year
 268 ended in 1984 shall be subtracted from sources within the United
 269 States, as described in s. 861(a)(2)(A) of the Internal Revenue
 270 Code, not including credits allowed under ss. 902 and 960 of the
 271 Internal Revenue Code, withholding taxes on dividends within the
 272 meaning of sub-subparagraph 2.a., and withholding taxes on
 273 royalties, interest, technical service fees, and capital gains.

274 6. Notwithstanding any other provision of this code,
 275 except with respect to amounts subtracted pursuant to
 276 subparagraphs 1. and 3., any increment of any apportionment
 277 factor which is directly related to an increment of gross
 278 receipts or income which is deducted, subtracted, or otherwise
 279 excluded in determining adjusted federal income shall be
 280 excluded from both the numerator and denominator of such

281 | apportionment factor. Further, all valuations made for
 282 | apportionment factor purposes shall be made on a basis
 283 | consistent with the taxpayer's method of accounting for federal
 284 | income tax purposes.

285 | Section 5. Subsection (5) is added to section 220.16,
 286 | Florida Statutes, to read:

287 | 220.16 Allocation of nonbusiness income.—Nonbusiness
 288 | income shall be allocated as follows:

289 | (5) The amount of payments received in exchange for
 290 | transferring a net operating loss authorized by s. 220.194 is
 291 | allocable to the state.

292 | Section 6. Section 220.194, Florida Statutes, is created
 293 | to read:

294 | 220.194 Corporate income tax credits for spaceflight
 295 | projects.—

296 | (1) SHORT TITLE.—This section may be cited as the "Florida
 297 | Space Business Incentives Act."

298 | (2) PURPOSE.—The purpose of this section is to create
 299 | incentives to attract launch, payload, research and development,
 300 | and other space business to this state.

301 | (3) DEFINITIONS.—As used in this section, the term:

302 | (a) "Administrative support" means that 51 percent or more
 303 | of an activity supports a certified spaceflight business.

304 | (b) "Certified" means that a spaceflight business has been
 305 | certified by the office as meeting all of the requirements
 306 | necessary to obtain at least one of the approved tax credits
 307 | available under this section, including approval to transfer a
 308 | credit.

HB 873

2011

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

310 (d) "New employee" means a state resident who begins or
311 maintains full-time employment in this state with a spaceflight
312 business on or after October 1, 2011. The term does not include
313 a person who is a partner, majority stockholder, or owner of the
314 business or a person who is employed in a temporary construction
315 job or primarily involved with the construction of real
316 property.

317 (e) "New job" means the full-time employment of an
318 employee in a manner that is consistent with terms used by the
319 Agency for Workforce Innovation and the United States Department
320 of Labor for purposes of unemployment compensation tax
321 administration and employment estimation. In order to meet the
322 requirement for certification specified in paragraph (5) (b), a
323 new job must:

324 1. Pay new employees at least 115 percent of the statewide
325 or countywide average annual private-sector wage for the 3
326 taxable years immediately preceding filing an application for
327 certification;

328 2. Require a new employee to perform duties on a regular
329 full-time basis in this state for an average of at least 36
330 hours per week each month for the 3 taxable years immediately
331 preceding filing an application for certification; and

332 3. Not be held by a person who has previously been
333 included as a new employee on an application for any credit
334 authorized under this section.

335 (f) "Office" means the Office of Tourism, Trade, and
336 Economic Development.

337 (g) "Payload" means an object built or assembled in this
 338 state to be placed into earth's upper atmospheres or space.

339 (h) "Reentry" means to return or attempt to return an
 340 object from earth's upper atmospheres or space.

341 (i) "Reentry service" means an activity conducted in this
 342 state related to preparing a reentry vehicle and any payload for
 343 reentry and the reentry.

344 (j) "Space vehicle" means any spacecraft, satellite, space
 345 station, upper-stage, launch vehicle, reentry vehicle, and
 346 related ground-support systems and equipment.

347 (k) "Spaceflight business" means a business that:

348 1. Is registered with the Secretary of State to do
 349 business in this state; and

350 2. Is currently engaged in a spaceflight project. A
 351 spaceflight business may participate in more than one
 352 spaceflight project at a time and may conduct work on a
 353 commercial, governmental, or United States defense-related
 354 spaceflight project.

355 (l) "Spaceflight project" means any of the following
 356 activities performed in this state:

357 1. Designing, manufacturing, testing, or assembling a
 358 space vehicle or components thereof;

359 2. Providing a launch service, payload processing service,
 360 or reentry service; or

361 3. Providing the payload for a launch vehicle or reentry
 362 space vehicle, administrative support, and tourism activities
 363 related to these activities.

364 (m) "Taxpayer" has the same meaning as provided in s.

HB 873

2011

365 220.03.

366 (n) "Total tax credits" means, for any state fiscal year,
 367 the sum of the tax credits approved for taxpayers whose taxable
 368 year begins on or after January 1 of the calendar year preceding
 369 the start of the applicable state fiscal year.

370 (4) TAX CREDITS.—

371 (a) If approved and certified pursuant to subsection (5),
 372 the following tax credits may be taken on a final return for a
 373 taxable year beginning on or after October 1, 2014:

374 1. A certified spaceflight business may take a
 375 nontransferable corporate income tax credit tax credit for up to
 376 50 percent of the business's tax liability under this chapter
 377 for the taxable year in which the credit is taken. The maximum
 378 nontransferable tax credit amount that may be approved per
 379 taxpayer for a taxable year is \$1 million, and the total tax
 380 credits that may be approved for any state fiscal year pursuant
 381 to this subparagraph may not exceed \$10 million.

382 2. A certified spaceflight business may transfer, in whole
 383 or in part, its Florida net operating loss that would otherwise
 384 be available to be taken on a return filed under this chapter.
 385 The maximum transferable tax credit amount that may be approved
 386 per taxpayer for a taxable year is \$2.5 million; the total tax
 387 credits that may be approved for any state fiscal year pursuant
 388 to this subparagraph may not exceed \$25 million. However, any
 389 outstanding credit that is carried forward by a transferee may
 390 not be used to calculate the annual limit.

391 a. In order to transfer the credit, the business must:

392 (I) Have been approved to transfer the tax credit for the

393 taxable year in which it is transferred;
 394 (II) Have incurred a qualifying net operating loss on
 395 activity in this state directly associated with one or more
 396 space flight projects in any of its 3 previous taxable years;
 397 (III) Not be 50 percent or more owned or controlled,
 398 directly or indirectly, by another corporation that has
 399 demonstrated positive net income in any of the 3 previous
 400 taxable years of ongoing operations; and
 401 (IV) Not be part of a consolidated group of affiliated
 402 corporations, as filed for federal income tax purposes, which in
 403 the aggregate demonstrated positive net income in any of the 3
 404 previous taxable years.
 405 b. The amount that may be claimed and transferred by a
 406 business is equal to:
 407 (I) One hundred percent of the net operating loss that
 408 could otherwise be claimed on a return filed under this chapter
 409 during its first full year of operations in this state.
 410 (II) One hundred percent of the net operating loss that
 411 could otherwise be claimed on a return filed under this chapter
 412 during its second full year of operations in this state.
 413 (III) One hundred percent of the net operating loss that
 414 could otherwise be claimed on a return filed under this chapter
 415 during its third full year of operations in this state.
 416 (b) Each business may be approved for only one credit per
 417 state fiscal year and may not claim any credit more than once.
 418 (c) Unless transferred pursuant to this section, credits
 419 may be granted only against the corporate income tax liability
 420 generated by or arising out of a spaceflight project in this

421 state, as documented in the certified spaceflight business's
 422 annual audit prepared by a certified public accountant licensed
 423 to do business in this state and as verified by the office.

424 (d) A certified spaceflight business may not file a
 425 consolidated return in order to claim the tax incentives
 426 described in this subsection.

427 (e) The certified spaceflight business or transferee must
 428 demonstrate to the satisfaction of the office and the department
 429 that it is eligible to take the credits approved under this
 430 section.

431 (5) APPLICATION AND CERTIFICATION.—

432 (a) In order to claim a tax credit under this section, a
 433 spaceflight business must first submit an application to the
 434 office for approval to earn credits. The application must be
 435 filed by the date established by the office. In addition to any
 436 information that the office may require, the applicant must
 437 provide a complete description of the activity in this state
 438 which demonstrates to the office the applicant's likelihood to
 439 be certified to take or transfer a credit. The applicant must
 440 also provide a description of the total amount and type of
 441 credits for which approval is sought. The office may consult
 442 with Space Florida regarding the qualifications of an applicant.
 443 The applicant shall provide an affidavit certifying that all
 444 information contained in the application is true and correct.

445 1. Approval of the credits shall be provided on a first-
 446 come, first-served basis, based on the date the completed
 447 applications are received by the office. A taxpayer may not
 448 submit more than one completed application per state fiscal

HB 873

2011

449 year. The office may not accept an incomplete placeholder
450 application, and the submission of such an application will not
451 secure a place in the first-come, first-served application line.

452 2. The office has 60 days after the receipt of a completed
453 application within which to issue a notice of intent to deny or
454 approve an application for credits. If a business does not
455 receive approval for a tax credit due to the exhaustion of the
456 annual total tax credit authorizations, the business may reapply
457 the following year and shall have priority over other applicants
458 notwithstanding the first-come, first-served policy. The office
459 shall determine the eligibility of an applicant and approve the
460 credits that the applicant may later be certified to take. The
461 office must ensure that the corporate income tax credits
462 approved each fiscal year for all applicants does not exceed the
463 limits provided in this section.

464 (b) In order to take, and thereafter, if applicable, to
465 transfer an approved credit, a spaceflight business must submit
466 an application for certification to the office along with a
467 nonrefundable \$250 fee.

468 1. The application must include:

469 a. The name and physical in-state address of the taxpayer.

470 b. Documentation demonstrating to the satisfaction of the
471 office that:

472 (I) The taxpayer is a spaceflight business.

473 (II) The business has engaged in a qualifying spaceflight
474 project before taking a credit under this section.

475 c. In addition to any requirement specific to a credit,
476 documentation that the business has:

HB 873

2011

477 (I) Created 35 new jobs in this state directly associated
478 with spaceflight projects during its immediately preceding 3
479 taxable years. The business shall be deemed to have created new
480 jobs if the number of jobs on the application for certification
481 is greater than the total number of full-time jobs located in
482 this state as stated on an application for approval to earn
483 credits;

484 (II) Invested a total of at least \$15 million in this
485 state on a spaceflight project during its immediately preceding
486 3 taxable years; and

487 d. The total amount and types of credits sought.

488 e. An acknowledgment that a transfer of a tax credit is to
489 be accomplished pursuant to subsection (5).

490 f. A copy of an audit or audits of the preceding 3 taxable
491 years, prepared by a certified public accountant licensed to
492 practice in this state, which identifies that portion of the
493 business's activities in this state related to spaceflight
494 projects in this state.

495 g. An acknowledgement that the business must file an
496 annual report on the spaceflight project's progress with the
497 office.

498 h. Any other information necessary to demonstrate that the
499 applicant meets the job creation, investment, and other
500 requirements of this section.

501 2. Within 60 days after receipt of the application for
502 certification, the office shall evaluate the application and
503 recommend the business for certification or denial. The
504 executive director of the office must approve or deny the

505 application within 30 days after receiving the recommendation.
 506 If approved, the office must provide a letter of certification
 507 to the applicant consistent with any restrictions imposed. If
 508 the office denies any part of the requested credit, the office
 509 must inform the applicant of the grounds for the denial. A copy
 510 of the certification shall be submitted to the department within
 511 10 days after the executive director's approval.

512 (6) TRANSFERABILITY OF CREDIT.—

513 (a) A certified spaceflight business allowed to transfer an
 514 approved credit, in whole or in part, to a taxpayer by written
 515 agreement may do so without transferring any ownership interest
 516 in the property generating the credit or any interest in the
 517 entity owning such property. The transferee may apply the
 518 credits against the tax with the same effect as if the
 519 transferee had incurred the eligible costs.

520 (b) In order to perfect the transfer, the transferor shall
 521 provide the department with a written transfer statement that
 522 has been approved by the office notifying the department of the
 523 transferor's intent to transfer the tax credits to the
 524 transferee; the date that the transfer is effective; the
 525 transferee's name, address, and federal taxpayer identification
 526 number; the tax period; and the amount of tax credits to be
 527 transferred. Upon receipt of the approved transfer statement,
 528 the department shall provide the transferee and the office with
 529 a certificate reflecting the tax credit amounts transferred. A
 530 copy of the certificate must be attached to each tax return for
 531 which the transferee seeks to apply the credits.

532 (7) AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

HB 873

2011

533 (a) In addition to its existing audit and investigative
534 authority, the department may perform any additional financial
535 and technical audits and investigations, including examining the
536 accounts, books, and financial records of the tax credit
537 applicant, which are necessary for verifying the accuracy of the
538 return and to ensure compliance with this section. If requested
539 by the department, the office and Space Florida must provide
540 technical assistance for any technical audits or examinations
541 performed under this subsection.

542 (b) Grounds for forfeiture of previously claimed tax
543 credits approved under this section exist if the department
544 determines, as a result of an audit or examination, or from
545 information received from the office, that a certified
546 spaceflight business, or in the case of transferred tax credits,
547 a taxpayer received tax credits for which the certified
548 spaceflight business or taxpayer was not entitled. The
549 spaceflight business or transferee must file an amended return
550 reflecting the disallowed credits and paying any tax due as a
551 result of the amendment.

552 (c) If an amendment to, recomputation of, or
553 redetermination of a certified spaceflight business's Florida
554 corporate income tax return changes an item entered into the
555 computation of a claimed credit, the taxpayer must notify the
556 department by filing an amended return. The amount of any credit
557 award not supported by the amended return shall be deemed a
558 deficiency that must be remitted with the amended return and is
559 subject to s. 220.23. The spaceflight business is also liable
560 for a penalty equal to the credit claimed or transferred,

561 reduced in proportion to the amount of the net operating loss
 562 certified for transfer over the amount of the disallowed
 563 certified net operating loss. The certified business and its
 564 successors must maintain all records necessary to support the
 565 reported net operating loss.

566 (d) The office may revoke or modify a certification
 567 granting eligibility for tax credits if it finds that the
 568 certified spaceflight business made a false statement or
 569 representation in any application, record, report, plan, or
 570 other document filed in an attempt to receive tax credits under
 571 this section. The office shall immediately notify the department
 572 of any revoked or modified orders affecting previously granted
 573 tax credits. The certified spaceflight business must also notify
 574 the department of any change in its claimed tax credit.

575 (e) The certified spaceflight business must file with the
 576 department an amended return or other report required by the
 577 department by rule and pay any required tax and interest within
 578 60 days after the certified business receives notification from
 579 the office that previously approved tax credits have been
 580 revoked or modified. If the revocation or modification order is
 581 contested, the spaceflight business must file the amended return
 582 or other report within 60 days after a final order is issued.

583 (f) The department may assess an additional tax, penalty,
 584 or interest pursuant to s. 95.091.

585 (8) RULES.—

586 (a) The office, in consultation with Space Florida, shall
 587 adopt rules to administer this section, including rules relating
 588 to application forms for credit approval and certification, and

HB 873

2011

589 the application and certification procedures, guidelines, and
590 requirements necessary to administer this section.

591 (b) The department may adopt rules to administer this
592 section, including rules relating to:

593 1. The forms required to claim a tax credit under this
594 section, the requirements and basis for establishing an
595 entitlement to a credit, and the examination and audit
596 procedures required to administer this section.

597 2. The implementation and administration of provisions
598 allowing the transfer of a net operating loss as a tax credit,
599 including rules that prescribe forms, reporting requirements,
600 and specific procedures, guidelines, and requirements necessary
601 to perform the transfer.

602 3. The minimum portion of the credit which is available
603 for transfer.

604 (9) ANNUAL REPORT.—Beginning in 2014, the office, in
605 cooperation with Space Florida and the department, shall submit
606 an annual report summarizing activities relating to the Florida
607 Space Business Incentives Act established under this section to
608 the Governor, the President of the Senate, and the Speaker of
609 the House of Representatives by each November 30.

610 Section 7. This act shall take effect upon becoming a law,
611 except that the tax credits authorized by this act may not be
612 applied to returns filed for any tax period before October 1,
613 2015.