

By Senator Ring

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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
5 interest to promote the commercialization of products
6 and services developed by technology companies;
7 amending s. 213.053, F.S.; authorizing the Department
8 of Revenue to share certain confidential information
9 with the Department of Economic Opportunity; amending
10 s. 220.02, F.S.; adding the certified credits
11 available under s. 220.198, F.S., to the list of
12 credits that may be taken against state corporate
13 income tax; amending s. 220.13, F.S.; redefining the
14 term "adjusted federal income" in relation to net
15 operating losses transferred and payments received for
16 a certified credit pursuant to the Commercialization
17 Credit Transfer Program; amending s. 220.16, F.S.;
18 providing for the allocation of financial assistance
19 pursuant to the Commercialization Credit Transfer
20 Program as income in this state; creating s. 220.198,
21 F.S.; creating the Commercialization Credit Transfer
22 Program; providing a purpose, intent, goals, and
23 objectives; providing definitions; requiring the
24 Department of Economic Opportunity to certify eligible
25 companies for the transfer of corporate income tax net
26 operating loss amounts as certified credits; providing
27 qualifications and an application process and
28 requirements; requiring an application fee; providing
29 for an application deadline; requiring the Department

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30 of Economic Opportunity to grant or deny an
31 application within a specified time after receiving a
32 completed application; providing for calculating the
33 certified credit amount; providing a maximum amount
34 that may be transferred; providing a penalty;
35 requiring each certified company to file an annual
36 report with the Department of Economic Opportunity;
37 requiring the Department of Economic Opportunity to
38 create an annual report; requiring the Department of
39 Economic Opportunity to adopt rules; authorizing the
40 Department of Revenue to adopt rules; providing
41 appropriations; providing for future repeal of the
42 Commercialization Credit Transfer Program; providing
43 an effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

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

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

55 213.053 Confidentiality and information sharing.—

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

58 (cc) Information relative to tax credits taken under s.

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59 220.198 to the Department of Economic Opportunity.

60
61 Disclosure of information under this subsection shall be
62 pursuant to a written agreement between the executive director
63 and the agency. Such agencies, governmental or nongovernmental,
64 shall be bound by the same requirements of confidentiality as
65 the Department of Revenue. Breach of confidentiality is a
66 misdemeanor of the first degree, punishable as provided by s.
67 775.082 or s. 775.083.

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

70 220.02 Legislative intent.—

71 (8) It is the intent of the Legislature that credits
72 against either the corporate income tax or the franchise tax be
73 applied in the following order: those enumerated in s. 631.828,
74 those enumerated in s. 220.191, those enumerated in s. 220.181,
75 those enumerated in s. 220.183, those enumerated in s. 220.182,
76 those enumerated in s. 220.1895, those enumerated in s. 220.195,
77 those enumerated in s. 220.184, those enumerated in s. 220.186,
78 those enumerated in s. 220.1845, those enumerated in s. 220.19,
79 those enumerated in s. 220.185, those enumerated in s. 220.1875,
80 those enumerated in s. 220.192, those enumerated in s. 220.193,
81 those enumerated in s. 288.9916, those enumerated in s.
82 220.1899, those enumerated in s. 220.1896, those enumerated in
83 s. 220.194, ~~and~~ those enumerated in s. 220.196, and those
84 enumerated in s. 220.198.

85 Section 4. Paragraph (b) of subsection (1) of section
86 220.13, Florida Statutes, is amended to read:

87 220.13 "Adjusted federal income" defined.—

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88 (1) The term "adjusted federal income" means an amount
89 equal to the taxpayer's taxable income as defined in subsection
90 (2), or such taxable income of more than one taxpayer as
91 provided in s. 220.131, for the taxable year, adjusted as
92 follows:

93 (b) *Subtractions.*—

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

95 a. The net operating loss deduction allowable for federal
96 income tax purposes under s. 172 of the Internal Revenue Code
97 for the taxable year, except that any net operating loss that is
98 transferred pursuant to s. 220.194(6) may not be deducted by the
99 seller,

100 b. The net capital loss allowable for federal income tax
101 purposes under s. 1212 of the Internal Revenue Code for the
102 taxable year,

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

106 d. The excess contributions deductions allowable for
107 federal income tax purposes under s. 404 of the Internal Revenue
108 Code for the taxable year, except that any net operating loss
109 transferred pursuant to s. 220.198 may not be deducted by the
110 seller.

111
112 However, a net operating loss and a capital loss shall never be
113 carried back as a deduction to a prior taxable year, but all
114 deductions attributable to such losses shall be deemed net
115 operating loss carryovers and capital loss carryovers,
116 respectively, and treated in the same manner, to the same

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117 extent, and for the same time periods as are prescribed for such
118 carryovers in ss. 172 and 1212, respectively, of the Internal
119 Revenue Code.

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

122 a. Dividends treated as received from sources without the
123 United States, as determined under s. 862 of the Internal
124 Revenue Code.

125 b. All amounts included in taxable income under s. 78 or s.
126 951 of the Internal Revenue Code.

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

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

141 4. There shall be subtracted from such taxable income any
142 amount of nonbusiness income included therein, including
143 payments received for a certified credit pursuant to s. 220.198.

144 5. There shall be subtracted any amount of taxes of foreign
145 countries allowable as credits for taxable years beginning on or

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146 after September 1, 1985, under s. 901 of the Internal Revenue
147 Code to any corporation which derived less than 20 percent of
148 its gross income or loss for its taxable year ended in 1984 from
149 sources within the United States, as described in s.
150 861(a)(2)(A) of the Internal Revenue Code, not including credits
151 allowed under ss. 902 and 960 of the Internal Revenue Code,
152 withholding taxes on dividends within the meaning of sub-
153 subparagraph 2.a., and withholding taxes on royalties, interest,
154 technical service fees, and capital gains.

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

165 Section 5. Subsection (6) is added to section 220.16,
166 Florida Statutes, to read:

167 220.16 Allocation of nonbusiness income.—Nonbusiness income
168 shall be allocated as follows:

169 (6) The amount of financial assistance received in exchange
170 for transferring a net operating loss as authorized by s.
171 220.198 is allocable to this state.

172 Section 6. Section 220.198, Florida Statutes, is created to
173 read:

174 220.198 Commercialization Credit Transfer Program; transfer

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175 of net loss carryforward as a certified credit.-

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

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

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

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

188 (2) DEFINITIONS.-As used in this section, the term
189 "certified credit" means the product of the net operating loss
190 generated in the current year apportioned to Florida, multiplied
191 by the corporate income tax rate imposed during the year in
192 which the loss occurred.

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

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

202 (b) Is primarily engaged in developing, manufacturing,
203 producing, or providing technology for commercial or public

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204 purposes and has a federally assigned NAICS code identifying the
205 company as such.

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

210 (d) Has been audited by an independent certified public
211 accountant, and:

212 1. Has not had positive net income in either of the 2
213 previous years of ongoing operations;

214 2. Has reported a net operating loss in either of the 2
215 previous years of operation; and

216 3. Is not at least 50 percent owned or controlled, directly
217 or indirectly, by another corporation that has demonstrated
218 positive net income in either of the 2 previous years of ongoing
219 operations, or is not part of a consolidated group of affiliated
220 corporations, as filed for federal income tax purposes, which in
221 the aggregate demonstrated positive net income in either of the
222 2 previous years of ongoing operations.

223 (e) Has at least one active application for a patent under
224 35 U.S.C. s. 111(a) on file with the United States Patent and
225 Trademark Office.

226 (f) Has received research grants from governmental
227 entities, foundations, or other private entities, or received
228 financial assistance from investors.

229 (g) Has an established business plan that describes its
230 commercialization strategy, a business-development plan that
231 includes revenue projections and a strategy for becoming
232 profitable, and a timeline for development which addresses

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233 revenue growth and job creation in this state.

234 (h) Has certified that:

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

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

241 3. Upon transfer of a certified credit, it will notify the
242 Department of Economic Opportunity of the amount within 30 days
243 after each certified credit is transferred, the amount of the
244 financial compensation for the credit received, and the identity
245 of the purchaser of the certified credit.

246 (4) APPLICATION FOR CERTIFICATION.—

247 (a) A completed application must be filed with the
248 Department of Economic Opportunity on or after 2 p.m. on the
249 first business day of August commencing in 2012. The Department
250 of Economic Opportunity may investigate the qualifications of
251 each company applicant and may require by rule the applicant to
252 provide such evidence of its qualification as is necessary to
253 ensure compliance with the requirements of this section,
254 including, but not limited to, the state corporate income tax
255 return supporting the request for certification of a certified
256 credit, audited financial statements, federal tax returns, and
257 state and federal employment filings.

258 (b) The Department of Economic Opportunity shall require a
259 nonrefundable application fee of \$100 per application submitted.
260 The Department of Revenue shall cooperate with the Department of
261 Economic Opportunity in its review of the applications.

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262 (c) The Department of Economic Opportunity shall grant or
263 deny an application in full or in part within 90 days after
264 receiving a completed application containing the necessary
265 information, including payment of the application fee. If the
266 department denies any part of the application, it shall inform
267 the applicant of the grounds for the denial.

268 (d) This section does not create a presumption that a
269 company applicant will be approved by the Department of Economic
270 Opportunity to transfer its certified credits. However, the
271 Department of Economic Opportunity may issue a nonbinding
272 opinion letter, upon the request of a prospective applicant, as
273 to its eligibility and the potential amount of certified credits
274 available.

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

284 (a) The net operating loss shall be transferred as a
285 certified credit.

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

288 (c) The Department of Economic Opportunity may not certify
289 the transfer of more than \$3 million in certified credits during
290 a state fiscal year.

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

299 (e) The certified company and its successors shall maintain
300 all records necessary to support the reported amount of
301 certified credits.

302 (6) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.-

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

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

314 (c) The purchaser of a certified credit amount may not
315 further sell, or otherwise transfer, the certified credit
316 amount.

317 (d) It is the responsibility of the certified company that
318 transferred the certified credit amount to notify the Department
319 of Economic Opportunity, within 30 days after transfer, of the

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320 amount of each certified credit transferred, the amount of the
321 financial assistance received, and the identity of the purchaser
322 of the certified credit. The Department of Economic Opportunity
323 shall certify to the Department of Revenue the same information
324 within 14 working days.

325 (7) REPORTING REQUIREMENTS.—

326 (a) Each company that is certified to transfer its
327 certified credit must provide the Department of Economic
328 Opportunity with an annual report on its development covering
329 the year after it receives funds from transferring its certified
330 credits. The report must include a summary of the company's
331 commercialization strategy; business development plan; timeline
332 for development; and actual employment and employment
333 projections, both total and within this state only. The report
334 is due January 3 of each applicable year.

335 (b) The Department of Economic Opportunity shall provide a
336 report by February 1 each year to the Governor, the President of
337 the Senate, and the Speaker of the House of Representatives
338 containing a synopsis of the individual company reports
339 described in paragraph (a).

340 (8) RULEMAKING AUTHORITY.—

341 (a) The Department of Economic Opportunity shall adopt
342 rules to administer this section. The rules must establish the
343 criteria for qualified technology research and experimental
344 development, production, or provision of technology for
345 commercial or public purposes; the format of application forms;
346 and the procedures to implement the program.

347 (b) The Department of Revenue may adopt rules to administer
348 this section.

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349 Section 7. (1) The sum of \$.... is appropriated to the
350 Economic Development Trust Fund to be drawn, as needed, to pay
351 the administrative costs incurred by the Department of Economic
352 Opportunity and associated with implementing the
353 commercialization credit transfer program.

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

359 Section 8. Section 220.198, Florida Statutes, is repealed
360 effective June 30, 2017, unless reviewed and saved from repeal
361 through reenactment by the Legislature.

362 Section 9. This act shall take effect July 1, 2012.