

By Senator Garcia

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1                   A bill to be entitled  
 2           An act relating to apportionment of income by sales  
 3           factor; amending s. 220.153, F.S.; defining the term  
 4           "manufacturer"; providing that only manufacturers  
 5           doing business within and without this state are  
 6           eligible for special apportionment of adjusted federal  
 7           income solely by sales factor for purposes of the  
 8           state corporate income tax; deleting provisions  
 9           requiring certain qualified capital expenditures  
 10          within a specified time period in order to qualify for  
 11          such apportionment; deleting application requirements  
 12          with respect thereto; providing an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Section 220.153, Florida Statutes, is amended to  
 17           read:

18           220.153 Apportionment by sales factor.—

19           (1) DEFINITION.—As used in this section, the term  
 20           "manufacturer" means any business establishment whose code  
 21           classification under the North American Industry Classification  
 22           System (NAICS) is within sector 31-33, Manufacturing ~~"qualified~~  
 23           ~~capital expenditures"~~ means expenditures in this state for  
 24           purposes substantially related to a business's production or  
 25           sale of goods or services. The expenditure must fund the  
 26           acquisition of additional real property (land, buildings,  
 27           including appurtenances, fixtures and fixed equipment,  
 28           structures, etc.), including additions, replacements, major  
 29           repairs, and renovations to real property which materially

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30 ~~extend its useful life or materially improve or change its~~  
31 ~~functional use and the furniture and equipment necessary to~~  
32 ~~furnish and operate a new or improved facility. The term does~~  
33 ~~not include an expenditure for a passive investment or for an~~  
34 ~~investment intended for the accumulation of reserves or the~~  
35 ~~realization of profit for distribution to any person holding an~~  
36 ~~ownership interest in the business. The term does not include~~  
37 ~~expenditures to acquire an existing business or expenditures in~~  
38 ~~excess of \$125 million to acquire land or buildings.~~

39 (2) APPORTIONMENT OF TAXES; ELIGIBILITY.—A manufacturer  
40 ~~taxpayer, not including a financial organization as defined in~~  
41 ~~s. 220.15(6) or a bank, savings association, international~~  
42 ~~banking facility, or banking organization as defined in s.~~  
43 ~~220.62, doing business within and without this state, who~~  
44 ~~applies and demonstrates to the Department of Economic~~  
45 ~~Opportunity that, within a 2-year period beginning on or after~~  
46 ~~July 1, 2011, it has made qualified capital expenditures equal~~  
47 ~~to or exceeding \$250 million may apportion its adjusted federal~~  
48 ~~income solely by the sales factor set forth in s. 220.15(5),~~  
49 ~~commencing in the taxable year that the Department of Economic~~  
50 ~~Opportunity approves the application, but not before a taxable~~  
51 ~~year that begins on or after January 1, 2013. Once approved, a~~  
52 manufacturer ~~taxpayer~~ may elect to apportion its adjusted  
53 federal income for any taxable year using the method provided  
54 under this section or the method provided under s. 220.15.

55 (3) QUALIFICATION PROCESS.—

56 (a) To qualify as a manufacturer that taxpayer ~~who~~ is  
57 eligible to apportion its adjusted federal income under this  
58 section, a manufacturer ~~;~~

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59           1. ~~The taxpayer must notify the Department of Economic~~  
60 ~~Opportunity of its intent to submit an application to apportion~~  
61 ~~its adjusted federal income in order to commence the 2-year~~  
62 ~~period for measuring qualified capital expenditures.~~

63           2. ~~The taxpayer~~ must submit an application to apportion its  
64 adjusted federal income under this section to the Department of  
65 Economic Opportunity ~~within 2 years after notifying the~~  
66 ~~Department of Economic Opportunity of the taxpayer's intent to~~  
67 ~~qualify~~. The application must be made under oath and provide  
68 such information as the Department of Economic Opportunity  
69 reasonably requires by rule for determining the applicant's  
70 eligibility to apportion adjusted federal income under this  
71 section. The manufacturer ~~taxpayer~~ is responsible for  
72 affirmatively demonstrating to the satisfaction of the  
73 Department of Economic Opportunity that it meets the eligibility  
74 requirements.

75           (b) The manufacturer ~~taxpayer~~ notice and application forms  
76 shall be established by the Department of Economic Opportunity  
77 by rule. The Department of Economic Opportunity shall  
78 acknowledge receipt of the notice and approve or deny the  
79 application in writing within 45 days after receipt.

80           (4) REVIEW AUTHORITY; RECAPTURE OF TAX.—

81           (a) In addition to its existing audit authority, the  
82 department may perform any financial and technical review and  
83 investigation, including examining the accounts, books, and  
84 records of a manufacturer ~~the taxpayer~~ as necessary, to verify  
85 that the manufacturer's ~~taxpayer's~~ tax return correctly computes  
86 and apportions adjusted federal income and to ensure compliance  
87 with this chapter.

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88 (b) The Department of Economic Opportunity may, by order,  
89 revoke its decision to grant eligibility for apportionment  
90 pursuant to this section, and may also order the recalculation  
91 of apportionment factors to those applicable under s. 220.15 if,  
92 as the result of an audit, investigation, or examination, it  
93 determines that information provided by the manufacturer  
94 ~~taxpayer~~ in the application, or in a statement, representation,  
95 record, report, plan, or other document provided to the  
96 Department of Economic Opportunity to become eligible for  
97 apportionment, was materially false at the time it was made and  
98 that an individual acting on behalf of the manufacturer ~~taxpayer~~  
99 knew, or should have known, that the information submitted was  
100 false. The manufacturer ~~taxpayer~~ shall pay such additional taxes  
101 and interest as may be due pursuant to this chapter computed as  
102 the difference between the tax that would have been due under  
103 the apportionment formula provided in s. 220.15 for such years  
104 and the tax actually paid. In addition, the department shall  
105 assess a penalty equal to 100 percent of the additional tax due.

106 (c) The Department of Economic Opportunity shall  
107 immediately notify the department of an order affecting a  
108 manufacturer's ~~taxpayer's~~ eligibility to apportion tax pursuant  
109 to this section. A manufacturer that ~~taxpayer who~~ is liable for  
110 past tax must file an amended return with the department, or  
111 such other report as the department prescribes by rule, and pay  
112 any required tax, interest, and penalty within 60 days after the  
113 manufacturer ~~taxpayer~~ receives notification from the Department  
114 of Economic Opportunity that the previously approved credits  
115 have been revoked. If the revocation is contested, the  
116 manufacturer ~~taxpayer~~ shall file an amended return or other

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117 report within 30 days after an order becomes final. A  
118 manufacturer that ~~taxpayer who~~ fails to pay the past tax,  
119 interest, and penalty by the due date is subject to the  
120 penalties provided in s. 220.803.

121 (5) RULES.—The Department of Economic Opportunity and the  
122 department may adopt rules to administer this section.

123 Section 2. This act shall take effect July 1, 2013.