

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.

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

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 16          Section 1. Section 220.153, Florida Statutes, is amended  
 17          to 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~~

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29 ~~repairs, and renovations to real property which materially~~  
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;

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  
 64 its adjusted federal income under this section to the Department  
 65 of 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

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85 | that the manufacturer's ~~taxpayer's~~ tax return correctly computes  
86 | and apportionments adjusted federal income and to ensure compliance  
87 | with this chapter.

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

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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  
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.