

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 952

INTRODUCER: Senator Gruters

SUBJECT: Taxation

DATE: January 6, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Lloyd | Caldwell | MS | Pre-meeting |
| 2. | _____ | _____ | FT | _____ |
| 3. | _____ | _____ | AP | _____ |

I. Summary:

SB 952 creates a documentary state tax exemption for federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor. The bill also increases the combined amount of tax credits which may be awarded to qualified businesses for research and development under s. 220.196, F.S., from \$9 million to \$50 million under any calendar year, and provides a process for the distribution of those tax credits for the 2021 calendar year.

SB 952 is effective July 1, 2022.

II. Present Situation:

Documentary Stamp Tax

Florida levies a documentary stamp tax on certain documents, which is comprised of two taxes imposed on different bases at varying rates. The tax on deeds and other documents related to real property is 70 cents per \$100,¹ and the tax on bonds, debentures, certificates of indebtedness, promissory notes, nonnegotiable notes, and other written obligations to pay money is 35 cents per \$100.^{2, 3} Documentary stamp taxes levied on promissory notes, nonnegotiable notes, and written obligations may not exceed \$2,450.⁴

Chapter 201, F.S., provides that certain transactions are exempt from the documentary stamp tax; notably, s. 201.25, F.S., which exempts loans made by the Small Business Emergency Bridge

¹ Section 201.02(1)(a), F.S.

² Section 201.07, F.S.

³ Section 201.08(1)(a), F.S.

⁴ *Id.*

Loan Program in response to a disaster for which the Governor declares a state of emergency and any loan made by the Agricultural Economic Development Program pursuant to s. 570.82, F.S.

Federal CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, in response to the COVID-19 pandemic. The CARES Act established, among other programs, the Paycheck Protection Program (PPP), which expanded the scope of both the businesses eligible for – and allowable uses of – loans made under section 7(a) of the Small Business Act.⁵ In addition to businesses which had already been eligible for Small Business Administration (SBA) loans, eligibility was expanded to businesses, nonprofits, veterans' organizations, and tribal businesses with 500 or fewer employees or that meet the size standards based on the business's NAICS code.⁶

COVID-19 State of Emergency

On April 6, 2020, Governor DeSantis issued Executive Order 20-95, suspending the collection of documentary stamp taxes levied on notes and other written obligations made under Title I of the federal CARES Act. The suspension remained in effect until the expiration of Executive Order 20-52 on May 3, 2021 when the Governor issued Executive Orders 20-101 and 102 ending the state of emergency related to COVID-19.^{7,8}

Federal Tax Credit

The U.S. Research and Experimentation Tax Credit⁹ was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.¹⁰ In 2015, the Protecting Americans from Tax Hikes (PATH) Act permanently extended the research and experimentation tax credit (also known as the research and development tax credit or R&D) after 16 temporary extensions.¹¹

In September 2021, the Internal Revenue Service (IRS) issued a *Memorandum* containing new guidance for taxpayers who apply for a refund claim for a research credit. This memorandum describes new requirements for increased documentation and more detailed information, including a declaration under the penalty of perjury verifying that the information and facts

⁵ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 286 (2020).

⁶ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 288 (2020).

⁷ Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

⁸ Governor Ron DeSantis, Fla. Exec. Orders No. 21-101 and 102 (May 3, 2021), available at <https://www.flgov.com/2021-executive-orders/> (last visited January 5, 2022).

⁹ The U.S. Research and Experimentation Tax Credit is also known as the Research and Development Tax Credit, 26 U.S.C. §41, Credit for increasing research activities.

¹⁰ Francisco Moris, *The U.S. Research and Experimentation Tax Credit in the 1990s* (July 2005), National Science Foundation Report, available at <https://wayback.archive-it.org/5902/20150627200929/http://www.nsf.gov/statistics/infbrief/nsf05316/> (last visited on January 5, 2022).

¹¹ U.S. Department of the Treasury, Office of Tax Analysis, *Research and Experimentation (R&E) Credit*, available at <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/RE-Credit.pdf> (last visited January 6, 2022).

provided by the taxpayer are accurate.¹² These changes remain in a grace period until January 10, 2022, and then transition to a one-year transition period during which the IRS will provide taxpayers 30 days to perfect research credit claims for refund prior to a final determination by the IRS.¹³

To qualify as a valid research credit claim request, the taxpayer at a minimum must:

- Identify all the business components to which the I.R.C. §41 research credit claim relates for that year.
- For each business component,
 - Identify all research activities performed;
 - Identify all individuals who performed each research activity; and
 - Identify all the information each individual sought to discover.
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year.¹⁴

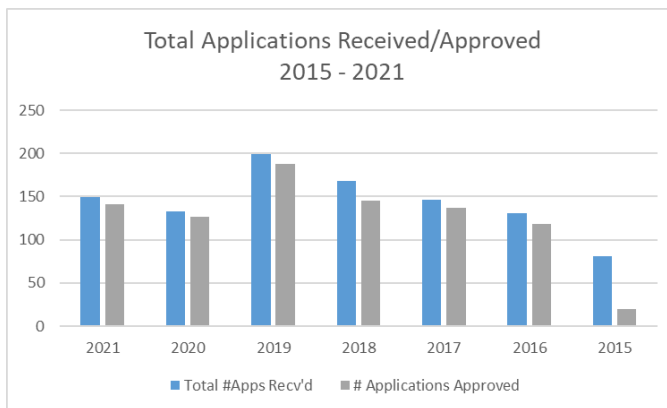


Figure 1: Data source: Florida Department of Revenue Annual Allocation Reports, available at <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf>

research.¹⁶

A business is eligible for the tax credit if it:

- Has qualified research expenses in Florida in the taxable year exceeding the base amount;¹⁷
- Claims, and is allowed, a research credit for such qualified expenses under federal law for the same taxable year; and

Florida Tax Credit

Section 220.196, F.S., authorizes a R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses.¹⁵ Under the federal definition, a qualified research expense includes in-house research expenses and contract research expenses, including any wages paid or incurred to employees, supplies used in the conduct of qualified research, and any amounts paid or incurred to another person for the right to use computers in the conduct of qualified

¹² Internal Revenue Service, Office of the Chief Counsel, *Memorandum Relating to I.R.C. § 41 Research Credit Refund Claims* (September 17, 2021), available at <https://www.irs.gov/pub/irs-lafa/20214101f.pdf> (last visited January 5, 2022).

¹³ Internal Revenue Service, Office of the Chief Counsel, *Memorandum Relating to I.R.C. § 41 Research Credit Refund Claims* (September 17, 2021), available at <https://www.irs.gov/pub/irs-lafa/20214101f.pdf> (last visited January 5, 2022).

¹⁴ Internal Revenue Service, Office of the Chief Counsel, *Memorandum Relating to I.R.C. § 41 Research Credit Refund Claims* (September 17, 2021), available at <https://www.irs.gov/pub/irs-lafa/20214101f.pdf> (last visited January 5, 2022).

¹⁵ Section 220.196(1)(c), F.S., defines “qualified research expenses” as research expenses qualifying for the credit under federal law for in house research expenses incurred in Florida or contract research expenses incurred in Florida.

¹⁶ See U.S.C. §41(b). Credit for increasing qualified research; qualified research expenses.

¹⁷ “Base amount” means the average of the business’ qualified research expenses in Florida allowed under 26 U.S.C. s. 41 for the preceding 4 taxable years. Chapter 220.196(1)(a), F.S.

- Is in a qualified target industry,¹⁸ specifically manufacturing, life sciences, information technology, aviation and aerospace, homeland security and defense, cloud information technology, marine sciences, materials sciences, or nanotechnology.¹⁹

The tax credit is 10 percent of the difference between the current tax year's R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.²⁰ The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business for up to five years following the year in which the qualified research expenses were incurred.²¹

Currently, the maximum amount of R&D credits that may be approved by the Department of Revenue (DOR) during any calendar year is \$9 million. Applications for the credit may be filed with the DOR on or after March 20 and before March 27 for qualified research expenses incurred within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.²² Eligible taxpayers are notified of the amount of credit allocated to them and the year for which the credit may be claimed. The chart below illustrates the number of applications received and approved by the DOR since program inception.²³

Since program inception, funding requests have annually exceeded the amount of credit available to be allocated as the chart below illustrates. The statutory cap has been more than \$9 million twice: \$16.5 million during the 2017 calendar year and \$23 million in the first program year. Except for the initial year when funds were distributed on a first come, first served basis, all qualified applicants receive a pro-rated amount of their funding request if the application is approved.²⁴

Qualified Target Industry Businesses

¹⁸ The Department of Economic Opportunity (DEO) certifies whether a business is a qualified target industry business, pursuant to s. 220.196(2)(a)3., F.S.

¹⁹ See s. 220.196(2)(a), F.S.

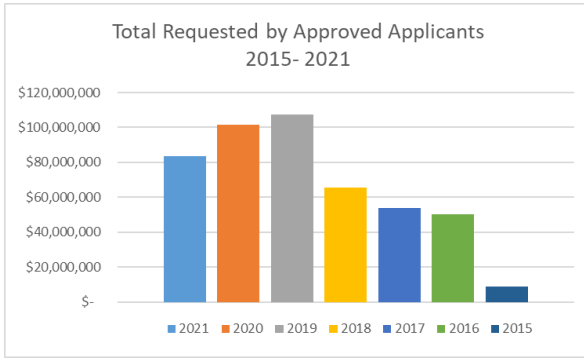
²⁰ See s. 220.196(2)(b), F.S.

²¹ See s. 220.196(2)(d), F.S.

²² See s. 220.196(2)(e), F.S.

²³ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax (2015-2021)*, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited January 6, 2022).

²⁴ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax (2015-2021)*, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited January 6, 2022).



The qualified target industry program is used to identify businesses that are eligible for tax refunds and which can create jobs with higher than average wages in industries that are expected to have a positive economic impact.²⁵ Target industry businesses are defined in s. 288.106, Florida Statutes as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to criteria developed by DEO in consultation with Enterprise Florida, Inc. (EFI).²⁶

The criteria includes future growth, stability, high wage, market and resource independence, industrial base diversification and strengthening, and positive economic impact.²⁷ EFI lists the recognized qualified target industries as manufacturing, corporate headquarters, research and development, global logistics, cleantech, life sciences, financial and professional services, aviation and aerospace, homeland security and defense, infotech, emerging technologies, and other manufacturing.²⁸ During the 2019 calendar year, DEO reported 76 executed agreements effective for the 2019-2020 fiscal year. These agreements had a projected capital investment of over \$2.2 billion and an average contracted annual wage of \$65,176.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 201.25, F.S., to exempt any loans relating to a state of emergency declared through either an executive order or a proclamation from the Governor pursuant to s. 252.36, F.S., from all taxes imposed under ch. 201. F.S.

Section 2 amends paragraph (e) of subsection (2) of section 220.196, F.S., to increase the total amount of annual credits available each calendar year from \$9 million to \$50 million. Obsolete language relating to the 2018 calendar year is removed.

Section 3 provides that application of the changes contained in SB 952 are applicable to s. 220.196, F.S., for the allocation of credits for expenses incurred in the 2021 calendar year.

Section 4 provides an effective date of July 1, 2022.

²⁵ Florida Department of Economic Opportunity and Enterprise Florida, *2020 Incentives Report*, p. 12, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited January 6, 2022).

²⁶ See s. 288.106(2)(n), F.S.

²⁷ See s. 288.106(2)(q), F.S.

²⁸ Florida Department of Economic Opportunity and Enterprise Florida, *2020 Incentives Report*, p. 12, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited January 6, 2022).

²⁹ Florida Department of Economic Opportunity and Enterprise Florida, *2020 Incentives Report*, p. 13, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited January 6, 2022).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 952 exempts from collection all taxes imposed under ch. 201, F.S., for any federal loans relating to a state of emergency which has been declared by executive order or by proclamation of the Governor pursuant to s. 282.36, F.S. Currently, only two programs are exempt from taxes imposed by Chapter 201:

- Loans made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency or proclamation of the Governor; or
- Loans made by the Agricultural Economic Development Program, pursuant to s. 570.82, F.S.

The expansion of this exemption would mean an indeterminate loss of additional tax income relating to the fees that would have otherwise been charged under ch. 201, F.S., for these transactions. The DOR did not provide an estimate of a fiscal impact noting that such an impact would be determined by the Revenue Estimating Conference which has not yet reviewed this proposal.³⁰

B. Private Sector Impact:

For eligible taxpayers, the proposed amendments to ch. 201, F.S., would provide additional mechanisms for tax relief on federal loans during a state of emergency.

³⁰ Florida Department of Revenue, *Senate Bill 952 Fiscal Analysis* (Nov. 29, 2021)(on file with Senate Committee on Military Affairs, Veteran Affairs, Space, and Domestic Security).

Savings on loan costs may assist taxpayers during a difficult financial time and allow taxpayers, especially those directly impacted by a disaster, to stretch limited financial resources. The number of taxpayers or private commercial entities that may be impacted is unknown as is the overall fiscal impact of the bill. The bill likely has an indeterminate negative fiscal impact to the state based on the number of declarations in any given year, the breadth of those declarations from a geographic standpoint, the specific areas involved in those declarations, the length of those declarations or proclamations, and ultimately the number of taxpayers who utilize the provision.

C. Government Sector Impact:

Governmental entities which now receive funds from federal loan transactions would likely experience an indeterminate loss of revenue during a state of emergency time period.

The bill increases the total amount of tax credits to be allocated each calendar year; however, the funds for those additional tax credits are not incorporated for the 2022-2023 fiscal year or any outgoing fiscal years.

VI. Technical Deficiencies:

The bill's effective date is July 1, 2022; however, Section 3 seeks to award credits for the 2021 calendar year in 2022. The application deadline is after March 20 and before March 27 annually. With no changes to these dates, it is unclear how credits would be awarded for the 2021 calendar year under the current timelines if the application acceptance period is before the bill's effective date.

VII. Related Issues:

The DOR's analysis of SB 952 said that some federal loans may require mortgages and the current bill language may not contemplate that scenario.³¹ As a result, any required mortgage that may arise out of a federal loan may not be exempt under the bill.³²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.25 and 220.196, F.S.

³¹ See United States Department of Agriculture, *Farm Loan Information Chart (March 2020)*, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/farm_loan_info_chart-factsheet.pdf (last visited January 6, 2022).

³² Florida Department of Revenue, Senate Bill 952 Fiscal Analysis (Nov. 29, 2021)(on file with Senate Committee on Military Affairs, Veterans Affairs, Space, and Domestic Security).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
