By Senator Ring

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A bill to be entitled

An act relating to economic development; providing legislative purpose to promote the commercialization of certain technologies by startup and early stage companies in this state; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain confidential information with the Office of Tourism, Trade, and Economic Development; amending s. 220.02, F.S.; adding the tax credits available under s. 220.194, F.S., to the list of credits that may be taken against state corporate income tax; amending s. 220.13, F.S.; redefining the term “adjusted federal income” in relation to net operating losses transferred and payments received for a certified tax credit pursuant to the Micro-Targeted Technology Commercialization Tax Credit Transfer Program; amending s. 220.16, F.S.; providing for the allocation of financial assistance pursuant to the Micro-Targeted Technology Commercialization Tax Credit Transfer Program as income in this state; creating s. 220.194, F.S.; creating the Micro-Targeted Technology Commercialization Tax Credit Transfer Program; providing a short title, intent, goals, and objectives; providing definitions; requiring that the Institute for the Commercialization of Public Research identify examples of micro-targeted technology and compile a list of the technology for the Office of Tourism, Trade, and Economic Development; requiring the office to certify eligible companies for the

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transfer of corporate income tax net operating loss amounts as certified credits; providing qualifications and an application process and requirements; requiring an application fee; providing for an application deadline; requiring the office to grant or deny an application within a specified time after receiving a completed application; providing for calculating the certified credit amount; providing a maximum amount that may be transferred; providing a penalty; requiring each certified company to file an annual report with the office; requiring the office and the Department of Revenue to adopt rules; providing an appropriation; providing for an allocation of the funds; providing for future repeal of the credit transfer program; providing an effective date.

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

Section 1. Legislative purpose.—The purpose of this act is to promote the commercialization of certain technologies by startup and early stage Florida companies, and to create high-wage jobs in these industry sectors.

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

213.053 Confidentiality and information sharing.—

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

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

Development.

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

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

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.192, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, ~~and~~ those enumerated in s. 220.1896, and those enumerated in s. 220.194.

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

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount

equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(b) *Subtractions.*—

1. There shall be subtracted from such taxable income:

a. The net operating loss deduction allowable for federal income tax purposes under s. 172 of the Internal Revenue Code for the taxable year,

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

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

d. The excess contributions deductions allowable for federal income tax purposes under s. 404 of the Internal Revenue Code for the taxable year<u>, except that any net operating loss transferred pursuant to s. 220.194 may not be deducted by the seller</u>.

However, a net operating loss and a capital loss shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers and capital loss carryovers, respectively, and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 and 1212, respectively, of the Internal Revenue Code.

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

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

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

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

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

4. There shall be subtracted from such taxable income any amount of nonbusiness income included therein, including payments received for a certified tax credit pursuant to s. 220.194.

5. There shall be subtracted any amount of taxes of foreign countries allowable as credits for taxable years beginning on or after September 1, 1985, under s. 901 of the Internal Revenue Code to any corporation which derived less than 20 percent of

its gross income or loss for its taxable year ended in 1984 from sources within the United States, as described in s. 861(a)(2)(A) of the Internal Revenue Code, not including credits allowed under ss. 902 and 960 of the Internal Revenue Code, withholding taxes on dividends within the meaning of sub-subparagraph 2.a., and withholding taxes on royalties, interest, technical service fees, and capital gains.

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

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

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

<u>(5) The amount of financial assistance received in exchange for transferring a net operating loss as authorized by s. 220.194 is allocable to this state.</u>

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

<u>220.194 Micro-Targeted Technology Commercialization Tax Credit Transfer Program; transfer of net loss carryforward as a certified credit.—</u>

(1) This section may be cited as the “Micro-Targeted Technology Commercialization Act.”

(2) INTENT; GOALS AND OBJECTIVES.—It is the intent of the Legislature that the Micro-Targeted Technology Commercialization Tax Credit Transfer Program act as a catalyst for eligible companies to accelerate their revenue and job growth and their market penetration by monetizing their net operating losses into transferable credits. The program’s objectives include:

(a) Accelerating the entry of new technology-based products into the marketplace;

(b) Producing additional technology-based jobs for this state;

(c) Accelerating commercialization of micro-targeted technologies in the biomedical and technical fields; and

(d) Encouraging the growth of high-quality, high-wage biomedical and technology firms in this state.

(2) DEFINITIONS.—As used in s. 220.194, the term:

(a) “Certified credit” means the product of the net operating loss generated in the current year apportioned to Florida, multiplied by the corporate income tax rate imposed during the year in which the loss occurred.

(b) “Certified micro-targeted technology company” means a business entity that is registered with the Secretary of State, is currently operating in this state, and is certified by the office to trade certified credits based on the company’s net operating losses, pursuant to this section.

(c) “Department” means the Department of Revenue.

(d) “Institute” means the Institute for the Commercialization of Public Research.

(e) "Micro-targeted technology" means individual components, technology, or processes that are crucial to the development of larger or more complex biomedical or technological devices, processes, or information systems.

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

(3) THE INSTITUTE FOR THE COMMERCIALIZATION OF PUBLIC RESEARCH.—The Institute for the Commercialization of Public Research or other Florida research-based consortium shall identify examples of micro-targeted technology and compile a list that is updated annually to add new technologies or delete those technologies that are no longer applicable. The office shall adopt this list as a rule.

(4) QUALIFICATIONS FOR CERTIFICATION.—A company seeking to transfer a certified credit shall be certified as a micro-targeted technology company by the office if it timely files a completed application and meets the requirements of this subsection. For purposes of this subsection, all conditions in paragraphs (a) through (g) must be met no later than the date the application is filed with the office. All other requirements in this subsection must be satisfied before the company received certified credits. In order to be certified, a micro-targeted technology company must demonstrate that it:

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

(b) Is primarily engaged in developing, manufacturing, producing, or providing micro-targeted technology for commercial or public purposes.

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

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

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

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

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

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

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

(g) Has an established business plan that describes its commercialization strategy, a business-development plan that includes revenue projections and a strategy for becoming profitable, and a timeline for development which addresses revenue growth and job creation in this state.

(h) Has certified that:

1. It will not transfer a certified credit in exchange for

private financial assistance in an amount that is less than 75 percent of the certified credit;

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

3. Upon transfer of a certified credit, it will notify the office of the amount within 30 days after each certified credit is transferred, the amount of the financial compensation for the credit received, and the identity of the purchaser of the certified credit.

(5) APPLICATION FOR CERTIFICATION.—

(a) A completed application must be filed with the office on or after 2 p.m., on the first business day of July commencing in 2011. The office may investigate the qualifications of each company applicant and may require by rule the applicant to provide such evidence of its qualification as is necessary to assure compliance with the requirements of this section, including, but not limited to, the state corporate income tax return supporting the request for certification of a certified credit, audited financial statements, federal tax returns, and state and federal employment filings.

(b) The office shall require a nonrefundable application fee of $100 per application submitted. The department shall cooperate with the office in its review of the applications.

(c) The office shall grant or deny an application in full or in part within 90 days after receiving a completed application containing the necessary information, including payment of the application fee. If the office denies any part of the application, it shall inform the applicant of the grounds for the denial.

(d) This section does not create a presumption that a company applicant will be approved by the office to transfer its certified credits. However, the office may issue a nonbinding opinion letter, upon the request of a prospective applicant, as to its eligibility and the potential amount of certified credits available.

(6) CALCULATION OF CERTIFIED CREDIT TRANSFER AMOUNT AND LIMITATIONS.—When submitting an application for certification, a company shall state the amount of the net operating loss, including any net operating loss carryover, it requests to be transferred as a certified credit. To the extent allowed as a deduction in this state, a reported net operating loss not otherwise taken may be certified by the office for transfer by a certified micro-targeted technology company in exchange for private financial assistance from a purchaser as follows:

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

(b) The maximum amount of certified credits which a micro-targeted technology company may transfer during its existence may not exceed $1 million.

(c) Once the office has certified the transfer of total certified credits that may be claimed during a state fiscal year in a cumulative amount of $3 million, the office may not approve the transfer of any additional credits that may be taken in that state fiscal year.

(d) The certified micro-targeted technology company is liable if, after a transfer, the net operating loss is adjusted by amendment or as a result of any other recomputation or redetermination of federal or Florida taxable income or loss. The certified micro-targeted technology company is also liable for a penalty equal to the amount of the credit transferred, reduced in proportion to the amount of the net operating loss certified for transfer over the amount of the certified net operating loss disallowed.

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

(7) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.—

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

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

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

(d) It is the responsibility of the certified micro-targeted technology company that transferred the certified credit amount to notify the office, within 30 days after transfer, of the amount of each certified credit transferred, the amount of the financial assistance received, and the identity of the purchaser of the certified credit. The office shall certify to the department the same information within 14 working days.

(8) REPORTING REQUIREMENT.—Each company that is certified to transfer its certified credit must provide the office with an annual report on its development covering the year after it receives funds from transferring its certified credits. The report must include the company’s commercialization strategy; business development plan; timeline for development; actual revenue and revenue projections, both total and within Florida only; and actual employment and employment projections, both total and within Florida only. The report is due January 3 each applicable year.

(9) RULEMAKING AUTHORITY.—

(a) The office shall adopt rules to administer this section. The rules must establish the criteria for qualified technology research and experimental development, production, or provision of technology for commercial or public purposes; the format of application forms; and the procedures to implement the program.

(b) The department may adopt rules to administer this section.

Section 7. (1) The sum of $8 million is transferred from the Florida Opportunity Fund to the Economic Development Trust Fund for the purpose of funding the Micro-Targeted Technology Commercialization Credit Transfer Program. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, the unexpended balance of this appropriation at the end of the fiscal year shall remain in the trust fund and shall be available for carrying out the purposes of the programs in future years.

(2) Of that amount:

(a) The sum of $2 million is appropriated to the Institute for the Commercialization of Public Research for the 2011-2012 fiscal year to support its operations.

(b) The sum of $5.8 million shall be retained in the Economic Development Trust Fund to be used to reimburse the General Revenue Fund so as to defray the cost to the state of the net operating loss tax credits created in s. 220.194, Florida Statutes.

(c) The sum of $200,000 shall be retained in the Economic Development Trust Fund to be drawn, as needed, to pay the administrative costs incurred by the Office of Tourism, Trade, and Economic Development associated with implementing the credit transfer program.

Section 8. Section 220.194, Florida Statutes, is repealed effective June 30, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 9. This act shall take effect upon becoming a law.