

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 Office of Tourism, Trade, and Economic
10 Development; amending s. 220.02, F.S.; adding the
11 certified credits available under s. 220.194, F.S., to
12 the list of credits that may be taken against state
13 corporate income tax; amending s. 220.13, F.S.;
14 redefining the term "adjusted federal income" in
15 relation to net operating losses transferred and
16 payments received for a certified credit pursuant to
17 the Commercialization Credit Transfer Program;
18 amending s. 220.16, F.S.; providing for the allocation
19 of financial assistance pursuant to the
20 Commercialization Credit Transfer Program as income in
21 this state; creating s. 220.194, F.S.; creating the
22 Commercialization Credit Transfer Program; providing a
23 purpose, intent, goals, and objectives; providing
24 definitions; requiring the office 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 office to

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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 to create an annual report; requiring the office to adopt rules; authorizing the Department of Revenue to adopt rules; providing appropriations; providing for future repeal of the Commercialization Credit Transfer Program; providing an effective date.

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

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

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.

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

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

68 220.02 Legislative intent.—

69 (8) It is the intent of the Legislature that credits
70 against either the corporate income tax or the franchise tax be
71 applied in the following order: those enumerated in s. 631.828,
72 those enumerated in s. 220.191, those enumerated in s. 220.181,
73 those enumerated in s. 220.183, those enumerated in s. 220.182,
74 those enumerated in s. 220.1895, those enumerated in s. 221.02,
75 those enumerated in s. 220.184, those enumerated in s. 220.186,
76 those enumerated in s. 220.1845, those enumerated in s. 220.19,
77 those enumerated in s. 220.185, those enumerated in s. 220.1875,
78 those enumerated in s. 220.192, those enumerated in s. 220.193,
79 those enumerated in s. 288.9916, those enumerated in s.
80 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
81 enumerated in s. 220.194.

82 Section 4. Paragraph (b) of subsection (1) of section
83 220.13, Florida Statutes, is amended to read:

84 220.13 "Adjusted federal income" defined.—

85 (1) The term "adjusted federal income" means an amount
86 equal to the taxpayer's taxable income as defined in subsection
87 (2), or such taxable income of more than one taxpayer as

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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, except that any net operating loss transferred pursuant to s. 220.194 may not be deducted by the seller.

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:

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

120 b. All amounts included in taxable income under s. 78 or s.
121 951 of the Internal Revenue Code.

122
123 However, as to any amount subtracted under this subparagraph,
124 there shall be added to such taxable income all expenses
125 deducted on the taxpayer's return for the taxable year which are
126 attributable, directly or indirectly, to such subtracted amount.
127 Further, no amount shall be subtracted with respect to dividends
128 paid or deemed paid by a Domestic International Sales
129 Corporation.

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

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

139 5. There shall be subtracted any amount of taxes of foreign
140 countries allowable as credits for taxable years beginning on or
141 after September 1, 1985, under s. 901 of the Internal Revenue
142 Code to any corporation which derived less than 20 percent of
143 its gross income or loss for its taxable year ended in 1984 from
144 sources within the United States, as described in s.
145 861(a)(2)(A) of the Internal Revenue Code, not including credits

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146 allowed under ss. 902 and 960 of the Internal Revenue Code,
147 withholding taxes on dividends within the meaning of sub-
148 subparagraph 2.a., and withholding taxes on royalties, interest,
149 technical service fees, and capital gains.

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

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

162 220.16 Allocation of nonbusiness income.—Nonbusiness income
163 shall be allocated as follows:

164 (5) The amount of financial assistance received in exchange
165 for transferring a net operating loss as authorized by s.
166 220.194 is allocable to this state.

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

169 220.194 Commercialization Credit Transfer Program; transfer
170 of net loss carryforward as a certified credit.—

171 (1) PURPOSE; GOALS AND OBJECTIVES.—It is the intent of the
172 Legislature that the Commercialization Credit Transfer Program
173 act as a catalyst for eligible technology companies to
174 accelerate their revenue and job growth and their market

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175 penetration by monetizing their net operating losses into
176 transferable credits. The program's objectives include:

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

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

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

183 (2) DEFINITIONS.—As used in this section, the term:

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

188 (b) "Department" means the Department of Revenue.

189 (c) "Office" means the Office of Tourism, Trade, and
190 Economic Development.

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

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

200 (b) Is primarily engaged in developing, manufacturing,
201 producing, or providing technology for commercial or public
202 purposes and has a federally assigned NAICS code identifying the
203 company as such.

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(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 either of the 2 previous years of ongoing operations;

2. Has reported a net operating loss in either 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 either 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 either 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:

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

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

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

244 (4) APPLICATION FOR CERTIFICATION.—

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

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

258 (c) The office shall grant or deny an application in full
259 or in part within 90 days after receiving a completed
260 application containing the necessary information, including
261 payment of the application fee. If the office denies any part of

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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.

(5) 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, which 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 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 company
may transfer during its existence may not exceed \$1 million.

(c) The office may not certify the transfer of more than \$3
million in certified credits during a state fiscal year.

(d) The certified company is liable if, after a transfer,
its 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 company is also
liable for a penalty equal to the amount of the credit
transferred, reduced in proportion to the amount of the net

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operating loss certified for transfer over the amount of the
certified net operating loss disallowed.

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

(6) 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
the state on the tax return for the time 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 time period shall be the amount
owed 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 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.

(7) REPORTING REQUIREMENTS.—

(a) Each company that is certified to transfer its

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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 a summary of the company's commercialization strategy; business development plan; timeline for development; and actual employment and employment projections, both total and within this state only. The report is due January 3 of each applicable year.

(b) The office shall provide a report by February 1 each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing a synopsis of the individual company reports described in paragraph (a).

(8) 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 \$.... is appropriated to 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 and associated with implementing the commercialization credit transfer program.

(2) The sum of \$.... is appropriated to the Department of Revenue to pay the initial administrative costs associated with amending tax forms, modifying computer software, creating a

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349 tracking system for the transferred credits, and otherwise
350 implementing the commercialization credit transfer program.

351 Section 8. Section 220.194, Florida Statutes, is repealed
352 effective June 30, 2016, unless reviewed and saved from repeal
353 through reenactment by the Legislature.

354 Section 9. This act shall take effect July 1, 2011.