

By the Committee on Commerce and Tourism; and Senator Ring

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1 A bill to be entitled
2 An act relating to the corporate income tax; amending
3 s. 213.053, F.S.; allowing the Office of Tourism,
4 Trade, and Economic Development access to confidential
5 taxpayer information related to the single sales
6 apportionment factor; amending s. 220.131, F.S.;
7 conforming provisions to changes made by the act;
8 creating s. 220.153, F.S.; providing for the
9 apportionment of certain taxpayer's adjusted federal
10 income solely by the sales factor provided in s.
11 220.15, F.S.; providing for eligibility based on the
12 taxpayer's capital expenditures and number of full-
13 time employees; providing an application process;
14 authorizing the Department of Revenue to examine and
15 verify that a taxpayer has correctly apportioned its
16 taxes; authorizing the Office of Tourism, Trade, and
17 Economic Development to approve and revoke approval of
18 an application; providing for the recapture of unpaid
19 taxes, interest, and penalties; authorizing the office
20 and the department to adopt rules; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Paragraph (k) of subsection (8) of section
26 213.053, Florida Statutes, is amended to read:

27 213.053 Confidentiality and information sharing.—

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

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30 (k)1. Payment information relative to chapters 199, 201,
31 202, 212, 220, 221, and 624 to the Office of Tourism, Trade, and
32 Economic Development, or its employees or agents that are
33 identified in writing by the office to the department, in the
34 administration of the tax refund program for qualified defense
35 contractors and space flight business contractors authorized by
36 s. 288.1045 and the tax refund program for qualified target
37 industry businesses authorized by s. 288.106.

38 2. Information relative to tax credits taken by a business
39 under s. 220.191 and exemptions or tax refunds received by a
40 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
41 and Economic Development, or its employees or agents that are
42 identified in writing by the office to the department, in the
43 administration and evaluation of the capital investment tax
44 credit program authorized in s. 220.191 and the semiconductor,
45 defense, and space tax exemption program authorized in s.
46 212.08(5)(j).

47 3. Information relative to tax credits taken by a taxpayer
48 pursuant to the tax credit programs created in ss. 193.017;
49 212.08(5)(g), (h), (n), (o) and (p); 212.08(15); 212.096; 212.097;
50 212.098; 220.181; 220.182; 220.183; 220.184; 220.1845; 220.185;
51 220.1895; 220.19; 220.191; 220.192; 220.193; 288.0656; 288.99;
52 290.007; 376.30781; 420.5093; 420.5099; 550.0951; 550.26352;
53 550.2704; 601.155; 624.509; 624.510; 624.5105; and 624.5107 to
54 the Office of Tourism, Trade, and Economic Development, or its
55 employees or agents that are identified in writing by the office
56 to the department, for use in the administration or evaluation
57 of such programs.

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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 4. Information relative to single sales factor
67 apportionment used by a taxpayer pursuant to the program created
68 in s. 220.153 to the Office of Tourism, Trade, and Economic
69 Development, or its employees or agents that are identified in
70 writing by the office to the department, for use in the
71 administration or evaluation of the program.

72 Section 2. Subsection (5) of section 220.131, Florida
73 Statutes, is amended to read:

74 220.131 Adjusted federal income; affiliated groups.—

75 (5) Each taxpayer shall apportion adjusted federal income
76 under s. 220.15 as a member of an affiliated group which files a
77 consolidated return under this section on the basis of
78 apportionment factors described in s. 220.15. For the purposes
79 of this subsection, each special industry member included in an
80 affiliated group filing a consolidated return ~~hereunder~~, who
81 ~~which member~~ would otherwise be permitted to use a special
82 method of apportionment under s. 220.151 or s. 220.153, shall
83 construct the numerator of its sales, property, and payroll
84 factors, respectively, by multiplying the denominator of each
85 such factor by the premiums or revenue miles factor ratio
86 otherwise applicable under ~~pursuant to~~ s. 220.151 in the manner
87 prescribed by ~~the~~ department ~~by~~ rule.

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88 Section 3. Section 220.153, Florida Statutes, is created to
89 read:

90 220.153 Apportionment by sales factor.—

91 (1) APPORTIONMENT OF TAXES; ELIGIBILITY.—A taxpayer, not
92 including a financial organization as defined in s. 220.15(6) or
93 a bank, savings association, international banking facility, or
94 banking organization as defined in s. 220.62, doing business
95 within and without this state, who applies and demonstrates to
96 the Office of Tourism, Trade, and Economic Development that, on
97 or after July 1, 2013, it has made qualified capital
98 expenditures equal to or exceeding \$250 million and has
99 maintained the number of full-time employees who were employed
100 by the taxpayer in this state at the time it notified the office
101 of its intent to apply for apportionment pursuant to this
102 section, may apportion its adjusted federal income solely by the
103 sales factor set forth in s. 220.15(5), commencing in the
104 taxable year of such determination. For the purposes of this
105 section, the term “capital expenditure” means an investment in
106 land, buildings, or equipment. Also, for the purposes of this
107 section, the term “full-time employee” does not include an
108 employee who was hired to construct improvements to real
109 property.

110 (2) APPLICATION PROCESS.—

111 (a) To qualify as a taxpayer who is eligible to apportion
112 its adjusted federal income under this section:

113 1. The taxpayer must notify the Office of Tourism, Trade,
114 and Economic Development of its intent to submit an application
115 to apportion its adjusted federal income in order to commence
116 the 2-year period for measuring qualified capital expenditures.

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117 2. The application must be submitted within 2 years after
118 notifying the office of the taxpayer's intent to qualify. The
119 application must be made under oath and provide such information
120 as the office reasonably requires by rule for determining the
121 applicant's eligibility to apportion adjusted federal income.
122 The taxpayer is responsible for affirmatively demonstrating to
123 the satisfaction of the office that it meets the eligibility
124 requirements.

125 (b) The taxpayer notice and application forms shall be
126 established by the office by rule. The office shall acknowledge
127 receipt of the notice and approve or deny the application in
128 writing within 45 days after receipt.

129 (c) Upon approval, the taxpayer, by the due date for filing
130 its tax return for the taxable year during which its eligibility
131 has been determined, including any extensions thereof, may elect
132 to apportion its adjusted federal income by filing a return for
133 the taxable year using the method provided under this chapter.

134 (d) Once made, a taxpayer may not revoke the election for 4
135 taxable years, at which time the taxpayer may renew the election
136 by the due date, or extended due date, for filing its tax return
137 by filing a return for the next taxable year using the method
138 provided under this chapter. If the taxpayer does not renew its
139 election, it shall apportion its adjusted federal income
140 pursuant to s. 220.15 and must reapply to apportion its adjusted
141 federal income pursuant to this section.

142 (3) REVIEW AUTHORITY; RECAPTURE OF TAX.—

143 (a) In addition to its existing audit authority, the
144 department may perform any financial and technical review and
145 investigation, including examining the accounts, books, and

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146 records of the taxpayer as necessary, to verify that the
147 taxpayer's tax return correctly computes and apportsions adjusted
148 federal income and to ensure compliance with this chapter.

149 (b) The Office of Tourism, Trade, and Economic Development
150 may, by order, revoke its decision to grant eligibility for
151 apportionment, and may also order the recalculation of
152 apportionment factors to those applicable under s. 220.15 if, as
153 the result of an audit, investigation, or examination, it
154 determines that information provided by the taxpayer in the
155 application, or in a statement, representation, record, report,
156 plan, or other document provided to the office to become
157 eligible for apportionment, was materially false at the time it
158 was made and that an individual acting on behalf of the taxpayer
159 knew, or should have known, that the information submitted was
160 false. The taxpayer shall pay such additional taxes and interest
161 as may be due pursuant to this chapter computed as the
162 difference between the tax that would have been due under the
163 apportionment formula provided in s. 220.15 for such years and
164 the tax actually paid. In addition, the department shall assess
165 a penalty equal to 100 percent of the additional tax due.

166 (c) The office shall immediately notify the department of
167 an order affecting a taxpayers eligibility to apportion tax
168 pursuant to this section. A taxpayer who is liable for past tax
169 must file an amended return with the department, or such other
170 report as the department prescribes by rule, and pay any
171 required tax, interest, and penalty within 60 days after the
172 taxpayer receives notification from the office that the
173 previously approved credits have been revoked. If the revocation
174 is contested, the taxpayer shall file an amended return or other

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175 report within 30 days after an order becomes final. A taxpayer
176 who fails to pay the past tax, interest, and penalty by the due
177 date is subject to the penalties provided in s. 220.803.

178 (4) RULES.—The Office of Tourism, Trade, and Economic
179 Development and the department may adopt rules to administer
180 this section.

181 Section 4. This act shall take effect July 1, 2011.