HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 873 Corporate Tax Credits for Spaceflight Projects
SPONSOR(S): Crisafulli and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Tecler	Kruse
2) Finance & Tax Committee		Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida is expected to lose nearly 9,000 jobs directly associated with the retirement of the Space Shuttle program and the cancellation of its successor Constellation. State agencies, regional workforce boards and local economic development organizations are developing strategies to soften the impact of the downsizing of NASA's role in Florida by using incentives currently offered by the state to recruit businesses and encourage aerospace investment.

The bill may enhance this effort by providing a corporate income tax credit of up to $1 million to spaceflight businesses. Further, the bill provides a transferable net operating loss tax credit of up to $2.5 million that may provide a significant benefit to new spaceflight businesses. In order to claim a credit, a qualified spaceflight business must create at least 35 new jobs and invest at least $15 million in a spaceflight project.

The tax credits are approved and issued on a first-come, first-served basis by the Office of Tourism, Trade, and Economic Development. No more than $35 million in total for both tax credits can be issued in a single year.

The Revenue Estimating Conference estimated that the non-transferable corporate income tax credit will have a recurring negative impact of $10 million on General Revenue and the transferable net operating loss tax credit will have a recurring negative impact of $25 million on General Revenue.

The bill is effective upon becoming law, but the tax credits provided by the bill may not be applied to returns filed for any taxable year beginning before October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

With the retirement of the Space Shuttle program later this year, and the cancellation of its successor Constellation, Florida is expected to lose nearly 9,000 jobs directly associated with the program. The Office of Tourism, Trade and Economic Development, the Agency for Workforce Innovation, regional workforce boards and local economic development organizations are developing strategies to soften the impact on local economies, ranging from the recruitment of new companies to offering retraining in related fields. Space Florida, the state's aerospace policy and economic development entity, is coordinating the effort to make Florida the hub of the commercial spaceflight industry.

Incentives and Tax Exemptions Currently Available

Currently, several financial incentives and tax exemptions are available for qualified aerospace businesses including, but not limited to: Qualified Targeted Industry Tax Refund Program, Qualified Defense Contractor and Spaceflight Business Refund Program, and tax exemptions for spaceport and manufacturing machinery and equipment purchases.

Qualified Targeted Industry Tax Refund Program

In general, a qualified business must operate in a targeted industry and must meet certain job and wage requirements. Aerospace activity, including the manufacturing of space vehicles, satellite communication, and launch operations are targeted by this program. Businesses that locate or expand in Florida are eligible for tax refunds of $3,000 per new job created. The tax refund increases to $6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for a $1,000 per job bonus if it pays over 150 percent of the average wage in the area, and a $2,000 per job bonus if it exceeds 200 percent of the average wage. Qualified businesses may claim refunds on corporate income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes.

Qualified Defense Contractor and Spaceflight Business Tax Refund Program

Pre-approved applicants in defense, homeland security, or space business industries creating or retaining jobs in Florida may receive tax refunds of $3,000 per net new full-time equivalent job created or retained and $6,000 in an Enterprise Zone or rural county for every net new full-time equivalent job created or retained. An additional $1,000 per job is available for businesses paying 150 percent of the average annual wage, and an additional $2,000 per job is available for businesses paying 200 percent of the average annual wage. A qualified defense contract or spaceflight business may claim refunds from, but not limited to: sales and use taxes, corporate income taxes, and insurance premium taxes.

Tax Exemptions for Machinery and Equipment Purchases

Qualified machinery and equipment used in aerospace manufacturing or spaceport activities are exempt from the Sales and Use Tax imposed under ch. 212, F.S.[1]

Changes Made By the Bill

The bill establishes a non-transferable corporate income tax credit intended to attract spaceflight businesses[2] to the state and encourage existing companies to expand or diversify into the aerospace sector. Further, the bill allows a spaceflight business to convert its net operating loss to a transferable tax credit. Through this modification, spaceflight businesses can gain cash liquidity by selling this tax credit. This option could be especially beneficial to new or start-up space businesses that are often not

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[1] Section 212.08(5)(b), F.S. and s. 212.08(5)(j), F.S.

[2] Spaceflight business is defined as a business:

- Registered with the Secretary of State to do business in Florida; and
- Currently engaged in a spaceflight project.

profitable for some time after starting operations. The bill also provides an application process to earn and certify tax credits, clarifies audit procedures, and requires an annual report to the Governor and the Legislature. Section 220.194, F.S., is created to implement the program.

Tax Credits
The bill provides that a space business approved and certified by the Office of Tourism, Trade and Economic Development ("OTTED") may claim or transfer tax credits on or after October 1, 2015. A business may claim only one credit in a state fiscal year. Once used, a credit cannot be claimed a second time. Unless transferred, credits may be granted only against corporate income tax liability as a result of a spaceflight project located in Florida. In addition, a spaceflight business or transferee claiming tax incentives provided in this bill may not file a consolidated tax return**.** The two types of credit provided in this bill are listed below.

Non-transferable Corporate Tax Credit
The bill provides a credit for up to 50 percent of the spaceflight business's annual corporate income tax liability. The maximum annual credit that may be granted to a spaceflight business is $1 million and the total tax credits approved in any state fiscal year may not exceed $10 million.

Transferable Net Operating Loss Credit
The bill also provides a spaceflight business with the option to convert its net operating loss to a transferable tax credit. The maximum annual transferable credit that may be approved for a spaceflight business in a single year is $2.5 million. The bill states that the amount that may be transferred by a spaceflight business and claimed by another business entity is equal to 100 percent of the total net operating loss accumulated by the spaceflight business in each of its first 3 full years of operation in the state. In addition, the total transferable tax credits approved in any state fiscal year may not exceed $25 million. In order to transfer the credit, a spaceflight business must:

- Be approved by OTTED to transfer the credit,
- Have incurred a qualifying net operating loss associated with at least one spaceflight project[3] in any of the last three tax years,
- Not be 50 percent or more owned by a corporation with positive income in any of the last three taxable years, and
- Not be part of a consolidated group of affiliated corporations with positive income in any of the last three taxable years.

The Department of Revenue must provide the transferee a certificate that reflects the tax credit amounts transferred. The transferee may apply the credit against the Corporate Income Tax in ch. 220, F.S.

Application and Certification
In general, the application and certification process occurs in two separate steps. A spaceflight business must first submit an application to OTTED seeking the approval to earn credits. The application must include the following:

- A complete description of the applicant's business activity in the state;[4]
- The total amount and type of credits sought; and
- An affidavit certifying that all information contained in the application is true and correct.

The bill provides that OTTED will determine the eligibility of the applicant and ensure that the total tax credits approved each fiscal year for all applicants does not exceed the limitations. OTTED may consult with Space Florida regarding the qualifications of the applicant. Approval for tax credits are on a first-come, first-served basis and a spaceflight business may only submit one application per state

[3] Spaceflight project means any of the following activities performed in Florida:
- Designing, manufacturing, testing, or assembling a space vehicle or components thereof;
- Providing a launch service, payload processing service, or reentry service; or
- Providing the payload for a launch vehicle or reentry space vehicle, administrative support, and tourism activities related to these activities.

[4] The description should demonstrate to OTTED that such applicant will meet the standards for certification.

fiscal year. If a spaceflight business is denied approval because the total tax credits authorized for that year are exhausted, then the business may reapply the following year and receive priority standing.

In order to claim or transfer tax credits earned, a spaceflight business must also submit to OTTED an application for certification. In the application for certification, the spaceflight business must demonstrate that it has:

- Met the eligibility standard for spaceflight business,
- Engaged in a qualifying spaceflight project in the last 3 taxable years,
- Created 35 new jobs[5] directly associated with qualified spaceflight projects in the last 3 taxable years, and
- Invested a total of at least $15 million on a spaceflight project in the state during the last three taxable years.

The application for certification must also include a non-refundable payment of $250 and audit reports of the last three taxable years which identifies the business' spaceflight activities. OTTED has a maximum of 90 days to approve or deny certification. Further, OTTED must provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

<u>Audit Authority and Reporting Requirements</u>
The bill provides direction with respect to the Department of Revenue ("DOR") and the following: the auditing of certified spaceflight businesses; the procedures for revocation and recapture of tax credits; the requirements for filing amended tax returns; and the penalties for filing inaccurate or fraudulent tax returns.

The bill provides that OTTED, in cooperation with Space Florida and DOR, must submit an annual report accounting the activities of the spaceflight business incentives program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The first report is due November 30, 2014.

<u>Changes Made to Existing Incentive Programs</u>
Current law provides that refund payments to a qualified business are capped at $5 million for both the Qualified Targeted Industry Tax Refund Program (QTI) and the Qualified Defense Contractor and Spaceflight Business Tax Refund Program (QDSC). The bill raises the cap for each program to $7 million.

<u>Other Changes Made By the Bill</u>
The bill authorizes OTTED to administer the tax credit program proposed as s. 220.194, F.S. The bill also authorizes DOR to provide information relating to tax credits claimed under s. 220.194, F.S., to OTTED and Space Florida.

The bill amends s. 220.02(8), F.S., to add s. 220.194, F.S., as the last credit in the order in which credits are to be claimed against the corporate income tax.

The bill creates s. 220.13(1)(a)16., F.S., requiring that the amount of credit claimed under 220.194, F.S., be added back in computing corporate income tax. The bill also amends s. 220.13(1)(b)1a., F.S., providing that net operating losses claimed as a credit or transferred may not be subtracted by the seller in computing adjusted federal income for Florida corporate income tax purposes.

[5] "New job" means the full-time employment of an employee in a manner that is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation. To meet the requirement for certification specified in subsection (5)(b) of the bill, a new job must:

- Pay new employees at least 115 percent of the statewide or countywide average annual private-sector wage for the three taxable years immediately preceding filing an application for certification;
- Require a new employee to perform duties on a regular full-time basis in this state for an average of at least 36 hours per week each month for the 3 taxable years immediately preceding filing an application for certification; and
- Not be held by a person who has previously been included as a new employee on an application for any credit authorized by this section.

For the purposes of computing corporate income tax liability, the bill creates s. 220.16(5), F.S., to require the seller of a net operating loss credit to treat payments received from the sale as non-business income.

The bill will take will take effect upon becoming law. However, tax credits created by the bill may not be claimed prior to October 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 14.2015, F.S., adding the administration of the spaceflight business tax credit program to the responsibilities of OTTED.

Section 2: Amends s. 213.053, F.S., allowing the Department of Revenue to share confidential tax data about certified spaceflight businesses with OTTED or Space Florida.

Section 3: Amends s. 220.02, F.S., adding the spaceflight business tax credits last in the list of credits that may be taken against the Florida corporate income tax.

Section 4: Amends s. 220.13, F.S., relating to the adjusted federal income for Florida corporate tax purposes.

Section 5: Amends s. 220.16, F.S., providing that payments received from the sale of a net operating loss credit are treated as non-business income.

Section 6: Creates s. 220.194, F.S., providing definitions, spaceflight business tax credits, an application and certification process, audit authority, and an annual report.

Section 7: Amends s. 288.1045, F.S., revising the QDSC business cap on tax refund payments

Section 8: Amends s. 288.106, F.S., revising the QTI business cap on tax refund payments.

Section 9: Provides that the bill will take effect upon becoming law and states that tax credits created by the bill may not be claimed prior to October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimated that the non-transferable corporate income tax credit will have a recurring negative impact of $10 million on General Revenue and the transferable net operating loss tax credit will have a recurring negative impact of $25 million on General Revenue. The tax credits provided by the bill may not be applied to returns filed for any taxable year beginning before October 1, 2015.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will potentially reduce the corporate tax liability for certain spaceflight businesses which may encourage private aerospace investment. In addition, the ability to convert a net operating loss into a transferable tax credit could provide additional liquidity to a number of new start-up businesses operating at a short-term loss.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

OTTED may adopt rules to administer the program including, but not limited to the application and certification process. DOR is directed to adopt rules related to tax forms, audit procedures, reporting requirements, and the transfer of tax credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, The Economic Development and Tourism Subcommittee adopted the following 4 amendments, which:

- Correct a cross reference.
- Clarify that a space business may claim or transfer tax credits on or after October 1, 2015.
- Modify procedures for computing tax liabilities on amended returns.
- Raise the maximum amount an eligible business may receive under QDSC and QTI.

The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted amendments.