

CHAPTER 98-293

Committee Substitute for House Bill No. 193

An act relating to credits against taxes; amending s. 220.02, F.S.; providing the order of credits against the corporate income tax or franchise tax; amending s. 220.03, F.S.; revising the definition of “child care facility startup costs” and defining “operation of a child care facility”; amending s. 220.12, F.S.; revising the definition of a taxpayer’s net income for corporate income tax purposes to delete the deduction of child care facility startup costs; creating s. 220.19, F.S.; authorizing a credit against the corporate income tax for child care facility startup costs and operation, and for payment of an employee’s child care costs; providing limitations; requiring a recipient to refund a portion of tax credits received under certain conditions; providing eligibility and application requirements; providing for administration by the Department of Revenue; providing for future expiration; defining “corporation”; creating s. 624.5107, F.S.; authorizing a credit against insurance premium taxes for child care facility startup costs and operation, and for payment of an employee’s child care costs; providing definitions; providing limitations; requiring a recipient to refund a portion of tax credits received under certain conditions; providing eligibility and application requirements; providing for administration by the Department of Revenue; providing for future expiration; providing an effective date.

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

Section 1. Subsection (10) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(10) 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. 220.68, ~~those enumerated in s. 631.719(1), those enumerated in s. 631.705,~~ those enumerated in s. 220.18, those enumerated in s. 631.828, 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, and those enumerated in s. 220.188, and those enumerated in s. 220.19.

Section 2. Paragraph (cc) of subsection (1) of section 220.03, Florida Statutes, is amended, and paragraph (gg) is added to said subsection, to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(cc) “Child care facility startup costs” means expenditures for substantial renovation, equipment, including playground equipment and kitchen appliances and cooking equipment, and real property, including land and improvements, and for reduction of debt, made in connection with used to establish a child care facility as defined by s. 402.302(4), or any facility providing daily care to children who are mildly ill, which is located in this the state on the taxpayer’s premises or within 5 miles of the employees’ workplace and used exclusively by the employees of the taxpayer.

(gg) “Operation of a child care facility” means operation of a child care facility as defined by s. 402.302, or any facility providing daily care to children who are mildly ill, which is located in this state within 5 miles of at least one place of business of the taxpayer and which is used by the employees of the taxpayer.

Section 3. Section 220.12, Florida Statutes, is amended to read:

220.12 “Net income” defined.—For purposes of this code, a taxpayer’s net income for a taxable year shall be its adjusted federal income, or that share of its adjusted federal income for such year which is apportioned to this state under s. 220.15, plus nonbusiness income allocated to this state pursuant to s. 220.16, ~~less child care facility startup costs as defined by s. 220.03(1)(dd)~~, less the exemption allowed by s. 220.14.

Section 4. Section 220.19, Florida Statutes, is created to read:

220.19 Child care tax credits.—

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(a)1. A credit of 50 percent of the startup costs of child care facilities operated by a corporation for its employees is allowed against any tax due for a taxable year under this chapter. A credit against such tax is also allowed for the operation of a child care facility by a corporation for its employees, which credit is in the amount of \$50 per month for each child enrolled in the facility.

2. A credit is allowed against any tax due for a taxable year under this chapter for any taxpayer that makes payments directly to a child care facility as defined by s. 402.302 which is licensed in accordance with s. 402.305, or to any facility providing daily care to children who are mildly ill, which payments are made in the name of and for the benefit of an employee of the taxpayer in this state whose child attends the child care facility during the employee’s working hours. The credit shall be an amount equal to 50 percent of the amount of such child care payments.

(b) A corporation may not receive more than \$50,000 in annual tax credits for all approved child care costs that the corporation incurs in any one year.

(c) The total amount of tax credits which may be granted for all programs approved under this section and s. 624.5107 is \$2 million annually.

(d) An application for tax credit under this section must be approved by the executive director of the department.

(e) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the corporation is eligible in that year under this section after applying the other credits and unused carryovers in the order provided by s. 220.02(10).

(f) If a corporation receives a credit for child care facility startup costs, and the facility fails to operate for at least 5 years, a pro rata share of the credit must be repaid, in accordance with the formula: $A = C \times (1 - (N/60))$, where:

1. "A" is the amount in dollars of the required repayment.
2. "C" is the total credits taken by the corporation for child care facility startup costs.
3. "N" is the number of months the facility was in operation.

This repayment requirement is inapplicable if the corporation goes out of business or can demonstrate to the department that its employees no longer want to have a child care facility.

(g) A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis.

(h) A taxpayer that is eligible to receive credit under s. 624.5107 is ineligible to receive credit under this section.

(2) ELIGIBILITY REQUIREMENTS.—

(a) A child care facility with respect to which a corporation claims a child care tax credit must be a child care facility as defined by s. 402.302 and must be licensed in accordance with s. 402.305, or must be a facility providing daily care to children who are mildly ill.

(b) The services of a child care facility for which a corporation claims a child care tax credit under subparagraph (1)(a)1. must be available to all employees of the corporation, or must be allocated on a first-come, first-served basis, and must be used by employees of the taxpayer.

(c) Two or more corporations may join together to start and to operate a child care facility according to the provisions of this section. If two or more corporations choose to jointly operate a child care facility, or cause a not-for-profit corporation to operate the child care facility, the corporations must file a joint application or the not-for-profit corporation may file the application with the department, pursuant to subsection (3), setting forth their proposal. The participating corporations may proportion the annual child care

costs credits in any manner they choose as appropriate, but no jointly operated corporate child care facility established under this section may receive more than \$50,000 in annual tax credits for all approved child care costs that the participating corporations incur in any one year.

(d) Child care payments for which a corporation claims a credit under subparagraph (1)(a)2. shall not exceed the amount charged by the child care facility to other children of like age and abilities of persons not employed by the corporation.

(3) APPLICATION REQUIREMENTS.—Any corporation that wishes to participate in this program must submit to the department an application for tax credit which sets forth the proposal for establishing a child care facility for the use of its employees or for payment of the cost of child care for its employees. This application must state the anticipated startup costs and the number of children to be enrolled, in the case of credit claimed under subparagraph (1)(a)1., or the number of children for whom child care costs will be paid, in the case of credit claimed under subparagraph (1)(a)2.

(4) ADMINISTRATION.—

(a) The Department of Revenue may adopt all rules pursuant to the Administrative Procedures Act to administer this section, including rules for the approval or disapproval of proposals submitted by corporations and rules to provide for cooperative arrangements between for-profit and not-for-profit corporations.

(b) The executive director's decision to approve or disapprove a proposal must be in writing, and, if the proposal is approved, the decision must state the maximum credit allowable to the corporation.

(c) All approvals for the granting of the tax credit require prior verification by the Department of Children and Family Services or local licensing agency that the corporation meets the licensure requirements as defined in s. 402.302 and is currently licensed in accordance with s. 402.305, or is a facility providing daily care to children who are mildly ill.

(d) Verification of the child care provider as an approved facility must be in writing, and must be attached to the credit application form submitted to the Department of Revenue.

(5) EXPIRATION.—This section expires on June 30, 2008, except that paragraph (1)(e), which relates to carryover credits, and paragraph (1)(f), which relates to repaying tax credits in specified circumstances, do not expire on that date.

(6) MEANING OF CORPORATION.—As used in this section, the term "corporation" includes all general partnerships, limited partnerships, unincorporated businesses, and all other business entities which are owned or controlled by the parent corporation.

Section 5. Section 624.5107, Florida Statutes, is created to read:

624.5107 Child care tax credits; definitions; authorization; limitations; eligibility and application requirements; administration; expiration.—

(1) DEFINITIONS.—As used in this section:

(a) “Child care facility startup costs” means expenditures for substantial renovation, equipment, including playground equipment and kitchen appliances and cooking equipment, real property, including land and improvements, and for reduction of debt, made in connection with the establishment of a child care facility as defined by s. 402.302, or any facility providing daily care to children who are mildly ill, which is located in this state on the insurer’s premises and used by the employees of the insurer.

(b) “Operation of a child care facility” means operation of a child care facility as defined by s. 402.302, or any facility providing daily care to children who are mildly ill, which is located in this state within 5 miles of at least one place of business of the insurer and which is used by the employees of the insurer.

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

(d) “Executive director” means the executive director of the Department of Revenue.

(2) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(a)1. A credit of 50 percent of the startup costs of child care facilities operated by an insurer for its employees is allowed against any tax due for a taxable year under s. 624.509 or s. 624.510. A credit against such tax is also allowed for the operation of a child care facility by an insurer for its employees, which credit is in the amount of \$50 per month for each child enrolled in the facility.

2. A credit is allowed against any tax due for a taxable year under s. 624.509 or s. 624.510 for any insurer that makes payments directly to a child care facility as defined by s. 402.302 which is licensed in accordance with s. 402.305, or to any facility providing daily care to children who are mildly ill, which payments are made in the name of and for the benefit of an employee of the insurer in this state whose child attends the child care facility during the employee’s working hours. The credit shall be an amount equal to 50 percent of the amount of such child care payments.

(b) An insurer may not receive more than \$50,000 in annual tax credits for all approved child care costs that the insurer incurs in any one year.

(c) The total amount of tax credits which may be granted for all programs approved under this section and s. 220.19 is \$2 million annually.

(d) An application for tax credit under this section must be approved by the executive director.

(e) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the insurer, the unused amount may be carried forward for a period not to exceed 5 years.

The carryover credit may be used in a subsequent year when the tax imposed by s. 624.509 or s. 624.510 for that year exceeds the credit for which the insurer is eligible in that year under this section.

(f) If an insurer receives a credit for child care facility startup costs, and the facility fails to operate for at least 5 years, a pro rata share of the credit must be repaid, in accordance with the formula: $A = C \times (1 - (N/60))$, where:

1. "A" is the amount in dollars of the required repayment.
2. "C" is the total credits taken by the insurer for child care facility startup costs.
3. "N" is the number of months the facility was in operation.

This repayment requirement is inapplicable if the insurer goes out of business or can demonstrate to the department that its employees no longer want to have a child care facility.

(3) ELIGIBILITY REQUIREMENTS.—

(a) A child care facility with respect to which an insurer claims a child care tax credit must be a child care facility as defined by s. 402.302 and must be licensed in accordance with s. 402.305, or must be a facility providing daily care to children who are mildly ill.

(b) The services of a child care facility for which an insurer claims a child care tax credit under subparagraph (2)(a)1. must be available to all employees of the insurer or must be allocated on a first-come, first-served basis, and must be used by employees of the insurer.

(c) Child care payments for which an insurer claims a credit under subparagraph (2)(a)2. shall not exceed the amount charged by the child care facility to other children of like age and abilities of persons not employed by the insurer.

(4) APPLICATION REQUIREMENTS.—Any insurer that wishes to participate in this program must submit to the department an application for tax credit which sets forth the proposal for establishing a child care facility for the use of its employees or for payment of the cost of child care for its employees. This application must state the anticipated startup costs and the number of children to be enrolled, in the case of credit claimed under subparagraph (2)(a)1., or the number of children for whom child care costs will be paid, in the case of credit claimed under subparagraph (2)(a)2.

(5) ADMINISTRATION.—

(a) The Department of Revenue may adopt all rules pursuant to the Administrative Procedures Act to administer this section, including rules for the approval or disapproval of proposals submitted by insurers and rules to provide for cooperative arrangements between for-profit and not-for-profit entities.

(b) The executive director's decision to approve or disapprove a proposal must be in writing, and, if the proposal is approved, the decision must state the maximum credit allowable to the insurer.

(c) All approvals for the granting of the tax credit require prior verification by the Department of Children and Family Services or local licensing agency that the insurer meets the licensure requirements as defined in s. 402.302 and is currently licensed in accordance with s. 402.305, or is a facility providing daily care to children who are mildly ill.

(d) Verification of the child care provider as an approved facility must be in writing, and must be attached to the credit application form submitted to the Department of Revenue.

(6) EXPIRATION.—This section expires on June 30, 2008, except that paragraph (2)(e), which relates to carryover credits, and paragraph (2)(f), which relates to repaying tax credits in specified circumstances, do not expire on that date.

Section 6. This act shall take effect December 31, 1998.

Became a law without the Governor's approval May 29, 1998.

Filed in Office Secretary of State May 28, 1998.