

CHAPTER 98-61

Committee Substitute for House Bill No. 3681

An act relating to capital investment tax credits; amending s. 220.02, F.S.; revising legislative intent on the order of application of certain credits; creating s. 220.191, F.S.; providing definitions; providing for a credit against the corporate income tax for certain capital costs; providing requirements; providing limitations; providing for certification of eligibility by the Office of Tourism, Trade, and Economic Development; providing duties of the Department of Revenue; authorizing the office to develop certification guidelines and application materials; providing a responsibility for qualifying businesses; authorizing the Department of Revenue to adopt rules; 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. 220.191, 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, and those enumerated in s. 220.188.

Section 2. Section 220.191, Florida Statutes, is created to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—For purposes of this section:

(a) “Commencement of operations” means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) “Cumulative capital investment” means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) “Eligible capital costs” means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

1. The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

2. The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

3. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

4. The costs associated with the installation of fixtures and equipment; surveys, including archeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

Eligible capital costs shall not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

(e) "Jobs" means full-time equivalent positions, as such term is consistent with terms used by Department of Labor and Employment Security and the United States Department of Labor for purposes of unemployment tax administration and employment estimation, resulting directly from a project in this state. Such term does not include temporary construction jobs involved in the construction of the project facility.

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

(g) "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the office to receive tax credits pursuant to this section.

(h) "Qualifying project" means a new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the office pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries.

(2) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the

project. The tax credit shall be granted against only the corporate income tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability generated by or arising out of a qualifying project:

(a) One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.

(b) Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.

(c) Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

A qualifying project which results in a cumulative capital investment of less than \$25 million is not eligible for the capital investment tax credit.

(3) Prior to receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations at a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

(4) The office, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the commencement of operations of a qualifying project and such certification shall be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

(5) The office, in consultation with Enterprise Florida, Inc., is authorized to develop the necessary guidelines and application materials for the certification process described in subsection (4).

(6) It shall be the responsibility of the qualifying business to affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements of this section.

(7) The Department of Revenue may specify by rule the methods by which a project's pro forma annual taxable income is determined.

Section 3. This act shall take effect July 1 of the year in which enacted.

Approved by the Governor May 15, 1998.

Filed in Office Secretary of State May 15, 1998.