

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1048

SPONSOR: Finance & Taxation Committee and Senator Pruitt

SUBJECT: Corporate Income Tax

DATE: March 28, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Favorable
2.	Fournier	Johansen	FT	Favorable/CS
3.			AED	
4.			AP	
5.				
6.				

I. Summary:

The committee substitute creates s. 220.187, F.S., to provide for corporate income tax credits for monetary donations to a nonprofit scholarship funding organization (SFO) and expand educational opportunities for children of limited financial resources.

- Donors may not designate a specific child or group of children as the beneficiaries of the contribution. A student may receive a scholarship if he or she qualifies for federal free or reduced-price lunches under the National School Lunch Act and: was enrolled in a public school in Florida during the previous school year; or received a scholarship from an eligible SFO during the previous school year; or is eligible to enter kindergarten or first grade.
- The committee substitute specifies how the scholarships may be used and provides a cap on the annual scholarship amount of \$3500 for a student in an eligible nonpublic school.

The committee substitute provides that SFOs must meet specific obligations, and all eligible contributions must be used for scholarships in the year in which the contribution is made. Also, the committee substitute provides for a credit equal to 100% of an eligible contribution made by a taxpayer against any tax due for the taxable year, not to exceed 75 percent of a taxpayer's total liability after all other credits are taken. Credit is also allowed on a consolidated return basis. The committee substitute prohibits carrying forward any credit to a future tax year. Conveying, assigning, or transferring credit to another entity is prohibited unless all of the taxpayer's assets are conveyed, assigned or transferred in the same transaction. The committee substitute specifies the responsibilities of the Department of Revenue and the Department of Education and requires the adoption of rules.

The committee substitute creates s. 220.187, F.S., and amends ss. 220.02, 220.13, and 213.053, F.S. The committee substitute provides an effective date of January 1, 2002, and applies to tax years beginning on or after that date.

II. Present Situation:

Tax and tax credits

Statutory provisions for tax credits include the following:

- Assessments against member HMO's income tax credit (s. 631.828, F.S.);
- Capital investment tax credit (s. 220.191, F.S.);
- Enterprise Zone jobs credit (s. 220.181, F.S.);
- Community contribution tax credit (s. 220.183, F.S.);
- Enterprise Zone property tax credit (s.220.182, F.S.);
- Rural job tax credit and urban high-crime area job tax credit (s. 220.1895, F.S.);
- Credit for emergency excise tax paid (s. 221.02, F.S.);
- Hazardous waste facility tax credit (s. 220.184, F.S.);
- Credit for Florida alternative minimum tax (s. 220.186, F. S.);
- Contaminated site rehabilitation tax credit (s. 220.1845, F.S.);
- Childcare tax credits (s. 220.19, F.S.); and
- State housing tax credit (s. 220.185, F.S.).

Section 220.02, F.S., provides legislative intent for priority order in applying tax credits. The law (s. 220.13, F.S.) provides for determining a taxpayer's adjusted federal income. Section 213.053, F.S., provides that except as otherwise provided, all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports, information, and letters of technical advice, is confidential (except for official purposes) and exempt from the provisions of the public records law. The law (s. 213.053(7), F.S.) lists information that may be shared with specified entities.

National School Lunch Program

The National School Lunch Program is a federally assisted meal program operating in more than 96,000 public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to nearly 27 million children each school day. The U.S. Department of Agriculture administers the program at the federal level and the department's income eligibility guidelines are used in determining eligibility for free and reduced price meals or free milk. Federal law (42 U.S.C. s. 1758) requires the guidelines to be revised annually to account for changes in the Consumer Price Index. They are effective from July 1 through June 30 every year and are based on federal poverty guidelines and are stated by household size.

Private Schools

Section 229.808, F.S. defines a non-public (private) school and sets forth minimum requirements.

III. Effect of Proposed Changes:

Purpose and definitions

Section 1. The committee substitute creates s. 220.187, F.S., relating to credits for taxpayer contributions to nonprofit scholarship funding organizations. The purpose of the legislation is to provide for tax credits for contributions to a nonprofit scholarship funding organization and expand educational opportunities for children of limited financial resources. The committee substitute creates the following definitions:

- “Eligible contribution” means a monetary contribution from a taxpayer to an eligible nonprofit scholarship funding organization; however, a taxpayer cannot donate to a specific child or group of children.
- “Eligible nonpublic school” means a private school in Florida that offers an education to students in any grades K-12 and does not discriminate on the basis of race, color, religion, or national origin.
- “Eligible nonprofit scholarship-funding organization” is a charitable organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that meets the following obligations:
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 - it provides scholarships up to \$3500 to qualified students for tuition, textbook expenses, or transportation to an eligible nonpublic school;
 - it may accept eligible contributions only up to the amount needed to provide scholarships for qualified students which the organization has identified and for which vacancies in eligible nonpublic schools have been identified.
 - it must spend 100 percent of the eligible contribution to provide scholarships in the same state fiscal year in which it was received. No portion of eligible contributions may be used for administrative expenses.
 - it must be audited annually by an independent certified public accountant, and the audit report must be submitted to the Auditor General and the Department of Education for review.
- “Qualified student” means a student who qualifies for federal free or reduced-price lunches under the National School Lunch Act and meets one of the following conditions:
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 - he or she was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding, or
 - he or she received a scholarship from an eligible SFO during the previous school year; or
 - he or she is eligible to enter kindergarten or first grade.

Credit

The committee substitute provides for a credit equal to 100 percent of an eligible contribution made by a taxpayer against any tax due for the taxable year under chapter 220, F.S. Also, the committee substitute limits individual credits to 75 percent of any tax due under ch. 220, F.S., for the taxable year after the application of any other allowable tax credits by the taxpayer. The total amount of tax credit under s. 220.187, F.S. is capped at \$50 million annually. The committee

substitute allows for credit on a consolidated return basis for a taxpayer who files a consolidated return as a member of an affiliated group under s. 220.131(1), F.S. The committee substitute prohibits carrying forward any unused credit to a future tax year. Conveying, assigning, or transferring credit to another entity is prohibited unless all of the taxpayer's assets are conveyed, assigned or transferred in the same transaction.

Administration

The committee substitute provides requirements for applications for credit. Applications must be submitted to the Department of Revenue (DOR) on forms established by rule. The committee substitute requires a cooperative agreement between DOR and the Department of Education for administering the provisions of the committee substitute and requires the Department of Education to annually submit a list of eligible scholarship-funding organizations to DOR. The Department of Education is responsible for monitoring the eligibility of the organizations and nonpublic schools and their expenditures. The committee substitute provides DOR with authority to make rules, including rules for allocating tax credits on a first-come, first-served basis. The Department of Education must adopt rules for determining the eligibility of SFOs and identifying qualified students.

Section 2. The committee substitute amends s. 220.02, F.S., to reference the new tax credits in legislative intent for priority order in applying tax credits. The following tax credits must be applied in the following order before the tax credit in the committee substitute may be applied:

- Assessments against member HMO's income tax credit (s. 631.828, F.S.);
- Capital investment tax credit (s. 220.191, F.S.);
- Enterprise Zone jobs credit (s. 220.181, F.S.);
- Community contribution tax credit (s. 220.183, F.S.);
- Enterprise Zone property tax credit (s. 220.182, F.S.);
- Rural job tax credit and urban high-crime area job tax credit (s. 220.1895, F.S.);
- Credit for emergency excise tax paid (s. 221.02, F.S.);
- Hazardous waste facility tax credit (s. 220.184, F.S.);
- Credit for Florida alternative minimum tax (s. 220.186, F. S.);
- Contaminated site rehabilitation tax credit (s. 220.1845, F.S.);
- Childcare tax credits (s. 220.19, F.S.); and
- State housing tax credit (s. 220.185, F.S.).

Section 3. The committee substitute amends s. 220.13, F.S., to provide for the inclusion of the new credits in determining a taxpayer's adjusted federal income.

Section 4. The committee substitute amends s. 213.053, F.S., to allow the Department of Revenue to share information on credits for contributions to SFOs with the Department of Education in conducting official business.

Section 5. The committee substitute provides an effective date of January 1, 2002 and applies to tax years beginning on or after that date.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Establishment Clause of the First Amendment to the U.S. Constitution provides that “*Congress shall make no law respecting an establishment of religion.*” Three standards have emerged as a test of establishment clause validity and are frequently referred to as the *Lemon*¹ test which ask whether a statute:

- (1) has a secular purpose;
- (2) has a primary effect of advancing or inhibiting religion; or
- (3) creates an excessive entanglement between government and religion.

- Arizona

In 1997, the Arizona Legislature enacted legislation to allow individual state income tax credit of up to \$500 for donations to school tuition organizations (STOs), effective for taxable years beginning from and after December 31, 1997.² The law defined an STO as a charitable organization in the state exempt from federal income taxation under s. 501(c) (3) of the Internal Revenue Code and that allocates at least 90% of its annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified private school of their parent’s choice³. To qualify as an STO, the organization was required to provide scholarships or tuition grants to students without limiting availability to only students of one school.

As a result of a challenge, the Arizona Supreme Court held that: (1) the tax credit did not violate the Establishment Clause; (2) the tax credit was not an "appropriation" of "public money" to establish religion or aid sectarian schools, for purposes of the State Constitution; and (3) the tax credit did not violate the anti-gift clause of the State Constitution. The U.S. Supreme Court declined to review this decision.⁴

¹ *Lemon v. Kurtzman*, (U.S. Pa. 1971) 403 U.S. 602, 91 S.Ct. 2105. The U.S. Supreme Court discussed recent changes to the *Lemon* test in *Mitchell v. Helms* 120 S.Ct. 2530 (U.S. La. 2000)

² Current law (A.R.S. s. 43-1089) provides up to \$625 of annual credit for a couple filing a joint return. The law was amended in 2000 to add preschools for handicapped children to the definition of an eligible school.

³ The law defined a qualified school as a nongovernmental primary or secondary school that does not discriminate on the basis of race, color, handicap, familial status, or national origin and satisfies the statutory requirements for private schools in Arizona as of January 1, 1997.

⁴ 193 Ariz. 273, 972 P.2d 606 and 120 S.Ct. 283, *Kotterman v. Killian*, (U.S. Ariz. 1999).

- Minnesota

Minnesota taxpayers brought action against Minnesota's Commissioner of Revenue and parents who had taken tax deduction for expenses incurred in sending their children to parochial schools, challenging the constitutionality of the Minnesota statute. The law allowed state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending elementary or secondary school. The U.S. Supreme Court held that the Minnesota statute did not violate the establishment clause by providing financial assistance to sectarian institutions.⁵

Minnesota subsequently expanded the deductions and enacted an education tax credit in the first special session of 1997, with the credit first available in tax year 1998.⁶ Parents can claim the credit for all education-related expenses that qualify for the dependent education expense deduction, except nonpublic school tuition. Credit is allowed for transportation, tuition for academic summer school and summer camps, tutoring, textbooks (defined to include instructional materials and equipment, including up to \$200 per family of computer hardware and educational software), and other expenses.

The maximum credit is \$1,000 per child and \$2,000 per family. The credit is refundable. Any amount that exceeds tax liability is paid to the claimant as a refund. Claimants with incomes under \$33,500 may claim the full credit. The income measure used to determine eligibility for the credit includes nontaxable interest, Social Security, and public welfare benefits; the same income measure is used under the property tax refund and the dependent care credit. According to a Minnesota House of Representatives research report, an estimated 38,500 families claimed the education credit in tax year 1998, at an estimated average benefit of \$369 each, for a total cost of \$14.2 million.⁷

- Florida

Article I, Section 3 of the Constitution of the State of Florida

"There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

The Arizona Supreme Court opinion is not binding on Florida. The tax credit could be tested under the provisions of Article I, section 3.

⁵ 103 S.Ct. 3062, 463 U.S. 388, *Mueller v. Allen*, (U.S. Minn. 1983).

⁶ "Minnesota School Finance," Minnesota House of Representatives, House Research Department, December 2000. (See Minn. Stat. s. 290.0674 2000).

⁷ "Income Tax Deductions and Credits for Public and Nonpublic Education in Minnesota," Minnesota House of Representatives, House Research Department, updated November 1999.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The committee substitute allows up to \$50 million in credits against the corporate income tax for eligible contributions to eligible scholarship funding organizations. Since these contributions cannot be accepted unless an organization has identified qualified students to receive scholarships and has identified vacancies for these students in eligible nonpublic schools, any loss in revenue will be offset by a reduction in public school funding in the same fiscal year. It is impossible to predict the number, locations and characteristics of students who will take advantage of this program; its impact on state revenue is indeterminate.

B. Private Sector Impact:

Corporate taxpayers who wish to donate to a scholarship funding organization will be able to take advantage of a 100 percent tax credit for eligible contributions, up to 75 percent of any tax due under ch. 220, F.S.

The committee substitute provides for scholarships of up to \$3500 to parents who wish to send their children to a private school. Eligible low income students of parents who were previously unable to afford a private school will benefit, to the extent that they are awarded an SFO scholarship that is accepted by a private school. In the 1999-2000 school year, there were 1,645 known private schools: 16 were specific exceptionality schools; 912 were elementary schools reporting student enrollment in one or more of the grades K-8; 124 were secondary schools reporting student enrollment only in one or more of the grades 9-12; and 593 were K-12 schools (elementary and secondary).

C. Government Sector Impact:

To the extent that eligible scholarship funding organizations can identify qualified students wishing to receive scholarships and can place these students in vacancies in qualified nonpublic schools, the level of state resources needed to fund public schools will be reduced, offsetting any revenue loss due to the corporate income tax credit. Since it is impossible to predict the number, locations and characteristics of students who take advantage of this program, its impact on state spending is indeterminate.

The Department of Revenue reports that it can absorb the costs of administering the provisions of the committee substitute.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Arizona School Tuition Organizations

In 1998, 16 school tuition organizations (STOs) reported to the Arizona Department of Revenue; however, only 15 were active. Eighteen additional organizations reported to the department in 2000. An Arizona Department of Revenue report noted that the court challenge to the credit was pending throughout calendar year 1998. Also, the report stated that it is common practice for an STO to grant scholarships in the year after donations are made because it is not until the end of the calendar year that the organization knows how much money is available for scholarships. The following tables reflect information on the private school tax credit donations and scholarships awarded by STOs for calendar years 1998 and 1999⁸:

**PRIVATE SCHOOL TAX CREDIT DONATIONS FOR CALENDAR YEARS
1998 AND 1999**

YEAR	NUMBER	AMOUNT
1998	4,247	\$ 1,816,299 ⁹
1999	31,875	\$13,706,611

**SCHOLARSHIPS PROVIDED BY STOs FOR CALENDAR YEARS
1998 AND 1999**

YEAR	NUMBER	AMOUNT
1998	326	\$ 167,650
1999	3,726	\$2,377,319

Illinois Income Tax Credit

Beginning January 1, 2000, an Illinois resident who is the parent or legal guardian of one or more qualifying students is eligible to receive a credit against his or her state income tax liability for tuition and other qualified education expenses (tuition, textbook fees, or lab fees) paid in excess of \$250 to public and certain nonpublic elementary or secondary schools and certain private schools providing home education. The maximum annual credit received may not exceed \$500. A qualified student is an Illinois resident who is under 21 years of age at the close of the school year and is a full-time student enrolled at any Illinois school (k-12) during the school year for which credit is claimed.

Foundations

Existing foundations include the Children's Educational Opportunity Foundation (Children First CEO America), a national organization that promotes school choice through private tuition grants and tax funded options. Florida organizations that are affiliates of Children First CEO include Miami Inner City Angels (MICA), Inc., Children First-Central Florida, Inc., and CSF Tampa Bay. Miami Inner City Angels (MICA), Inc., and Children First-Central Florida, Inc., are active Florida not-for-profit organizations. According to the organization, the following private investments were made by the organizations:¹⁰

Affiliate	1995-96	1996-97	1997-98	1998-99	Total	Number of Children	Waiting List
Miami Inner City	N/A	N/A	N/A	\$100,000	\$100,000	100	457

⁸ *Final Report of 1998 Credits for Schools*, Arizona Department of Revenue, Office of Economic Research and Analysis, October 2000.

⁹ 3,576 donations were claimed on returns.

¹⁰ See <http://www.childrenfirstamerica.org/investments.html>.

Angels								
Children First-Central Florida	\$177,772	\$238,228	\$156,726	\$70,000	\$642,726	104	2,800	

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
