

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Tax Credits for Contributions to Nonprofit Scholarship-funding

Organizations

SPONSOR(S): Weatherford and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Policy Committee		Duncan	Ahearn
2) Education Policy Council			
3) Finance & Tax Council			
4)			
5)			

SUMMARY ANALYSIS

The Corporate Income Tax Credit Scholarship Program provides an income tax credit for corporations making eligible contributions to nonprofit scholarship-funding organizations that award scholarships to children from low-income families. Through this source of funding, children in grades K-12 are provided an opportunity to attend private schools that meet the state’s eligibility requirements.

The bill renames the Corporate Income Tax Scholarship Program the Florida Tax Credit Scholarship Program to reflect the addition of the insurance premium tax credit and the sales and use tax credit as eligible contributions to the scholarship program.

The bill provides that a person who is registered with the Department of Revenue to collect or remit sales or use tax, who makes estimated tax payments, and who makes an eligible contribution to an eligible scholarship-funding organization (SFO) is allowed a credit against any estimated sales tax payment. The taxpayer is allowed a sales tax credit of 100% of the eligible contribution; however, the credit may not exceed 75% of the tax due.

The bill allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the state’s insurance code. However, the credit may not exceed 75% of the tax due.

The bill defines “direct certification list” to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families Program, or the Food Distribution Program on Indian Reservations. The list must be provided to the Department of Education by the Department of Children and Family Services. Children on the direct certification list would be eligible to receive a scholarship under the Florida Tax Credit Scholarship Program.

Certain SFOs are permitted to request that the Department of Education inform all households participating in the National School Lunch Program of their eligibility to apply for a tax credit scholarship. In addition, once a year, an SFO may request a special communication to be issued; however, the SFO must reimburse the Department of Education for the cost of postage.

The maximum amount of tax credits that may be granted each fiscal year pursuant to the scholarship program remains at \$118 million. By expanding the program to include insurance premium tax credits and sales and use tax credits, there is an increased probability that the \$118 million tax credit cap will be reached and as a result less monies will be available to the general revenue fund. However, the CITC Program produces a net savings to the state. It is estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.

Constitutional, drafting, and implementation concerns are noted in the analysis; however, the sponsor will be filing an amendment to address these issues. See section **III., COMMENTS**, of this analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Corporate Income Tax Credit Program

The Corporate Income Tax Credit Scholarship Program (CITC Program), a Florida school choice program created in 2001¹, was established to encourage taxpayers to make private, voluntary contributions to nonprofit scholarship-funding organizations (SFOs) that award scholarships to children from low-income families.² Through this source of funding, children in grades K-12 are provided an opportunity to attend sectarian or non-sectarian private schools that meet the state's eligibility requirements.³ A corporation is allowed a corporate income tax credit of 100% of its contribution; however, the credit may not exceed 75% of taxes owed during the year of the contribution. Currently, the maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$118 million.⁴

SFOs are responsible for the receipt and distribution of the program funds. The funds are used to pay for the cost of tuition and fees for an eligible private school, or for transportation to a public school outside the district in which the student lives or to a developmental research (lab) school. An eligible scholarship-funding organization (SFO) that has operated under the program for at least three years without any negative financial findings in its most recent audit is authorized to use up to 3% of the eligible contributions for administrative expenses incurred for the operation of the program, of which no more than 1/3rd may be spent to recruit contributions from corporations.⁵

SFOs must *expend* at least 75% of the net eligible contributions remaining after administrative expenses on annual or partial-year scholarships during the fiscal year in which the contributions are collected. Up to 25% of net eligible contributions may be carried forward by an SFO to the succeeding fiscal year. Contributions carried forward must be expended for annual or partial-year scholarships.

¹ Ch. 2001-225, s. 5, L.O.F.

² s. 220.187(2) and (5), F.S.

³ s. 220.187(2), F.S.

⁴ s. 220.187(5), F.S.

⁵ s. 220.187(6)(i), F.S.

Any net contributions that are in excess of the 25% carryforward must be returned to the State Treasury for deposit in the General Revenue Fund.⁶

When the program began in 2002, \$50 million was the maximum amount of tax credits that could be granted each fiscal year and tax credits were not permitted to be carried forward.⁷ Approximately \$47.6 million of tax credits were granted.⁸

Beginning July 1, 2003, the maximum amount of tax credits and carryforward tax credits (tax credits) that could be granted each fiscal year was increased to \$88 million.⁹ In 2003, approximately \$47.5 million of tax credits were granted; in 2004, approximately \$47.5 million of tax credits were granted; in 2005, approximately \$80.3 million of tax credits were granted; in 2006, approximately \$87.1 million of tax credits were granted; and in 2007, approximately \$85.4 million of tax credits were granted.¹⁰

Effective July 1, 2008, the maximum amount of tax credits that could be granted each fiscal year was increased to \$118 million.¹¹ As of February 2009, approximately \$88.4 million of tax credits have been granted.¹²

Student Eligibility

A student is eligible for a first-time CITC Program scholarship if he or she qualifies for free or reduced-price school lunches under the National School Lunch Program,¹³ and:

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible SFO or the State of Florida during the previous school year;
- Is eligible to enter kindergarten or first grade; or
- Is currently placed, or during the previous Fiscal Year was placed, in foster care.¹⁴

The SFO must document each scholarship student's eligibility before granting a scholarship for an academic year.¹⁵ In subsequent years, a scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed 200% of the Federal Poverty Level.¹⁶

Scholarships

During the 2007-2008 school year, \$73.5 million in scholarships was awarded to more than 21,493 students.¹⁷ As of February 2009, 23,259 scholarship recipients are enrolled in 988 participating private schools. Eighty-one percent of participating private schools are religious, and 19% are non-religious.¹⁸

⁶ s. 220.187(6)(i)2., F.S.

⁷ Ch. 2001-225, s. 5, L.O.F.

⁸ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

⁹ s. 220.187, F.S. was amended to permit a corporation to, for no more than 3 years, carry forward an unused amount of tax credit because of insufficient tax liability on the part of the corporation. The carryforward provision applied to all approved contributions made after January 1, 2002. See Ch. 2003-391, s. 9, L.O.F.

¹⁰ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹¹ Ch. 2008-241, s.1, L.O.F.

¹² Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹³ <http://www.fns.usda.gov/cnd/lunch/default.htm> Program Fact Sheet, U.S. Department of Agriculture, Food and Nutrition Service, July 2008. The National School Lunch Program is administered by the Food and Nutrition Service within the U.S. Department of Agriculture.

¹⁴ s. 220.187(3), F.S.

¹⁵ s. 220.187(6)(i)3., F.S.

¹⁶ s. 220.187(3), F.S.

¹⁷ <http://www.floridaschoolchoice.org/Information/ctc/> Florida Department of Education, August 2008.

Scholarship award amounts provided to a student in any single school year by an eligible SFO must not exceed:

- \$3,950 for a scholarship awarded to a student enrolled in an eligible private school beginning in the 2008-2009 state fiscal year and each year thereafter.
- \$500 for a scholarship for transportation awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides or in a developmental research (lab) school.¹⁹

Florida School Meals Program

Florida's School Lunch and School Breakfast Programs are administered by the Food and Nutrition Management Division in the Florida Department of Education (DOE).²⁰ In the 2007-2008 school year, approximately 1.2 million PreK-12 students were eligible²¹ for free or reduced-price lunch.²²

The Food Stamp Program, Temporary Assistance for Needy Families, and the Food Distribution Program on Indian Reservations

Food Stamp Program

Administered by the Florida Department of Children and Family Services (DCF), the Food Stamp Program helps low-income households purchase nutritious foods. Households must have monthly gross income less than or equal to 130% of the federal poverty level and net income less than or equal to 100% of the federal poverty level.²³ Households containing individuals age 60 or older or disabled must only meet the net monthly income limit.²⁴

Temporary Assistance for Needy Families

The Temporary Assistance for Needy Families (TANF) block grant provides federal funding to states for a wide range of benefits and services. The DCF, the Department of Health, and the Agency for Workforce Innovation are the three state agencies in Florida responsible for administering the TANF State Plan.²⁵

The DCF is the recipient of the TANF block grant and is responsible for determining eligibility for TANF and Temporary Cash Assistance (TCA). Eligibility for TANF-funded services for families who are not receiving cash assistance is generally set at 200% of the poverty level.²⁶ Individuals eligible to receive TCA are defined as needy by having an income below 185% of the federal poverty level. Specific categories of people, such as victims of domestic violence, families at risk of welfare dependency, and

¹⁸ http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports.asp, Florida Department of Education, February 2009.

¹⁹ s. 220.187(11)(a), F.S.

²⁰ <http://www.fldoe.org/FNM/natschoollunch/descriptions.asp>, Program Description and Requirements, Florida Department of Education, Food and Nutrition Management.

²¹ Children from families with incomes at or below 130% of the poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals for which students can be charged no more than 40 cents. For the period July 1, 2008 through June 30, 2009, 130 % of the poverty level is \$27,560 for a family of four; 185% is \$39,220.

Children from families with incomes over 185% of poverty pay a full price, but their meals are still subsidized. <http://www.fns.usda.gov/cnd/lunch/> National School Lunch Program Fact Sheet, U.S. Department of Agriculture, July 2008.

²² <http://www.fldoe.org/eias/eiaspubs/> Free/Reduced Price Lunch Eligibility, Florida Department of Education, Series 2009-03F, August 2008.

²³ See *supra* note 14.

²⁴ <http://www.dcf.state.fl.us/ess/foodstamps.shtml>

²⁵ http://www.dcf.state.fl.us/ess/tanf_moe_resources.shtml Temporary Assistance to Needy Families, An Overview of Program Requirements, Florida Department of Children and Families, October 2006.

²⁶ *Id.*

families with children at risk of abuse or neglect, with an income below 200% of the federal poverty level are eligible for TANF-funded benefits.²⁷

Food Distribution Program on Indian Reservations

The Food Distribution Program on Indian Reservations (FDPIR) provides foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. The program is administered by the Food and Nutrition Service, an agency of the U.S. Department of Agriculture. Households are certified based on income and resource standards set by the Federal government, and must be recertified at least every 12 months. Households may not participate in the FDPIR and the Food Stamp Program in the same month.²⁸ For Federal Fiscal Years 2004 – 2008, no American Indians in Florida have participated in the program.²⁹

Direct Certification

In general, an adult is required to complete an application for a child to receive a free or reduced-price school meal. However, if a child is a member of a household participating in the Food Stamp Program, the TANF Program, or the FDPIR, then the agency administering such program is authorized to certify the household's participation in lieu of an application. This process of authorization is referred to as direct certification.³⁰

As stated earlier, the DCF administers the Food Stamp Program and TANF Program. Three times a year, the DCF transmits a computer file containing eligibility information and documentation for those households participating in either program to the DOE. DOE acts as a clearinghouse and only retains the information until a local school district downloads the information as part of the direct certification process. The DCF and the DOE have entered into a Memorandum of Understanding to carry out this function.³¹

Taxes

Sales and Use Taxes

The State of Florida levies a 6% sales and use tax on most sales of tangible personal property and on a limited number of services.³² The taxes imposed become state funds at the moment of collection³³ with the exception of funds held in trust for the benefit of a cooperating state for mail order sales.³⁴ Use tax complements and is applied in the same manner as sales tax. The "use" component of the sales and use tax provides uniform taxation on items that are purchased outside Florida but are used or stored in the state.³⁵ Dealers³⁶ are required to register with the Department of Revenue (DOR)³⁷ and those who

²⁷ [http://www.myflorida.com/cf_web/ Temporary Assistance for Needy Families State Plan Renewal October 1, 2005 – September 30, 2008](http://www.myflorida.com/cf_web/Temporary_Assistance_for_Needy_Families_State_Plan_Renewal_October_1,_2005_-_September_30,2008), Florida Department of Children and Families.

²⁸ [http://www.fns.usda.gov/fdd/programs/fdpi/ Program Fact Sheet](http://www.fns.usda.gov/fdd/programs/fdpi/Program_Fact_Sheet), U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Fact Sheet, July 2008.

²⁹ <http://www.fns.usda.gov/pd/21irpart.htm> *Food Distribution Program on Indian Reservations: Persons Participating*, U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Program on Indian Reservations, January 28, 2009.

³⁰ 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

³¹ Telephone conferences with DCF and DOE staff on February 19, 2009.

³² Chapter 212, F.S.

³³ s. 212.15 (1), F.S.

³⁴ s. 212.06(5)(a)2.e., F.S.

³⁵ http://www.dor.myflorida.com/dor/taxes/sales_tax.html, *Florida Sales and Use Tax*, Florida Department of Revenue.

paid \$200,000 or more in sales or use tax for the preceding state fiscal year are required to calculate the amount of their estimated tax liability for any month and remit the tax due to the DOR as prescribed by law.³⁸

Insurance Premium Taxes

The insurance premium tax is imposed on insurance premiums written in Florida and paid by insurance companies to the DOR.³⁹ Under certain circumstances, out of state insurance companies are required to pay retaliatory taxes to the state.⁴⁰ Retaliatory taxes help ensure a level playing field by preventing companies from choosing to locate in one state in order to lower their insurance premium taxes.⁴¹ Insurance companies are permitted to receive a corporate income tax credit against insurance premium taxes.⁴² In addition, a credit is allowed against the net insurance premium tax equal to 15% of the amount of salaries paid by insurance companies to employees located or based in Florida.⁴³ The total of the credit granted for the taxes paid by the insurer cannot exceed 65% of the insurance premiums due.⁴⁴

OPPAGA Report on the Corporate Income Tax Credit Scholarship Program and the Use of Credits for the Insurance Premium Taxes

In 2008, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature by December 1, 2008, addressing, in part, the use of credits for insurance premium taxes under chapter 624, F.S.,⁴⁵ as an additional source of funding for the scholarship program.

OPPAGA reported the following:

- Allowing insurance premium tax credits to be included in the scholarship program would broaden the base of companies likely to participate and increase the chance that higher caps set by the Legislature would be met.
- Insurance companies must have a net corporate income tax liability greater than 65% of their insurance premium tax liability in order to reduce their tax liability by contributing to the scholarship program. Companies that do not have such a corporate income tax liability may contribute to the program, but would not receive a reduction in tax liability for doing so.
- Allowing insurance companies the flexibility of receiving tax credits against either their corporate income taxes or their insurance premium taxes would maximize the number of companies that would make contributions to scholarship funding organizations, *but would also complicate tax administration.*
- Out-of-state insurance companies could face increased retaliatory taxes if they lowered their Florida insurance premium tax liability by taking credits for scholarship contributions. Establishing a provision that exempts these insurance companies from additional retaliatory taxes in Florida would help ensure that they have an incentive to participate in the program.

³⁶ s. 212.06(2), F.S., provides a definition for “dealers.”

³⁷ s. 212.18 (3), F.S., requires every person desiring to engage in or conduct business in the state as a dealer to file an application for a certificate of registration.

³⁸ s. 212.11(4), F.S.

³⁹ s. 624.509, F.S.

⁴⁰ s. 624.5091, F.S.

⁴¹ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

⁴² s. 624.509(4), F.S.

⁴³ s. 624.509(5), F.S.

⁴⁴ s. 624.409(6), F.S.

⁴⁵ Chapter 624, F.S., relates to Florida’s Insurance Code.

- Allowing the insurance premium tax credit for scholarship contributions to exceed the 65% credit limitation would provide more opportunity for companies to receive tax benefits than if it were included in the 65% credit limitation. However, including the scholarship credit in the 65% credit limitation would limit the tax revenue loss to the state.
- The Capital Investment Program and the Community Contribution Tax Credit Program permit insurance companies to claim an insurance premium tax credit for certain activities. While the participating insurance companies may take tax credits, they are not assessed additional retaliatory taxes. Both the Capital Investment and Community Contribution tax credits are authorized to exceed the 65% credit limitation.⁴⁶

Effect of Proposed Changes

Program Administration

The bill renames the program the Florida Tax Credit Scholarship Program to reflect the addition of the insurance premium tax credit and the sales and use tax credit as eligible contributions. Thus, references made to the “Corporate Income Tax Credit Scholarship Program” are replaced with “Florida Tax Credit Scholarship Program” throughout the bill.

The bill authorizes scholarship-funding organizations (SFOs), eligible to receive the 3% administrative allowance,⁴⁷ to request the Department of Education (DOE) to inform all households participating in the National School Lunch Program that they are eligible to apply for a tax credit scholarship. An eligible scholarship-funding organization (SFO) making the request will determine the notice’s form and the DOE must include the form in any normal correspondence with eligible households. Once a year an SFO may request a special communication to be issued; however, the SFO must reimburse the DOE for the cost of postage.

The bill further modifies the program to require the DOE, upon request by an SFO, to provide the direct certification list to any SFO eligible to receive the 3% administrative allowance.⁴⁸ The bill defines “direct certification list” to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families (TANF) program, or the Food Distribution Program on Indian Reservations (FDPIR). The list would be provided to the DOE by the Department of Children and Families Services (DCF), and children receiving these services would also be eligible to receive a scholarship under the Florida Tax Credit Scholarship Program. Currently, any child on the direct certification list would be eligible to participate in the National School Lunch Program.

Confidentiality and privacy issues are raised by this provision. It does not appear that federal law envisions direct certification information regarding students being shared with private entities. The release of certain information may require parental consent.⁴⁹ The DOE, as the administrator of the National School Lunch Program for the state, is authorized to receive all eligibility information, but it does not access the information. Only the school districts download the data.

Sales Tax Credit

The bill provides that a person who is registered with the Department of Revenue (DOR) to collect or remit sales or use tax, who makes estimated tax payments, and who makes an eligible contribution to an eligible SFO is allowed a credit against any estimated sales tax payment. The taxpayer is allowed a

⁴⁶ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

⁴⁷ See *supra* note 5 and accompanying text.

⁴⁸ s. 220.187(6)(i), F.S.

⁴⁹ <http://www.fns.usda.gov/cnd/lunch/default.htm> Eligibility Manual for School Meals, U.S. Department of Agriculture, Food and Nutrition Service, Child and Nutrition Programs, January 2008.

credit of 100% of the eligible contribution; however, the credit may not exceed 75% of the “tax due.” It is not clear as to whether the phrase “tax due” refers to the tax due with the return or the amount of estimated sales tax payment due with the return.

The bill provides that the credit is to be taken on the sales tax return for the month following the month in which the eligible contribution is received by the eligible SFO.

The bill provides that a taxpayer’s use of the credit taken under the Florida Tax Credit Scholarship Program does not reduce the amount of credit available to the taxpayer under the provisions of law governing the credit for the Florida alternative minimum tax.⁵⁰

The bill states that a sales and use tax credit taken under the provisions of the program is not state funds or revenue or otherwise held in trust for the state. Issues arise regarding this provision. If the sales and use tax credits are not the state’s revenue for the purposes of the program, then to whom does the revenue belong? If the revenue is considered income to the dealer collecting the sales or use tax, then tax implications may arise.

Insurance Premium Tax Credits

The bill allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the state’s insurance code. However, the credit may not exceed 75% of the tax due. In addition, the insurance premium tax credit may be taken after the insurer has paid the required excise (premium) taxes to the firefighters’ pension trust fund and the police officers’ retirement trust fund.⁵¹ This provision may be difficult to implement as the state’s insurance code contains many fee and tax provisions which are managed by more than one state agency.

The bill further provides that an insurer claiming a credit against premium tax liability is not required to pay any additional retaliatory tax.

B. SECTION DIRECTORY:

Section 1: Creates s. 212.099, F.S., authorizing credits against the sales and use tax for contributions to certain eligible SFOs.

Section 2: Amends s. 220.187, F.S., defining the term “direct certification”; expanding the Corporate Income Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits; renaming the scholarship program the Florida Tax Credit Scholarship Program; specifying that a taxpayer’s use of the credit does not reduce alternative minimum tax credits; providing that certain funds are not state funds or revenues of the state or held in trust for the state; specifying DOE notification requirements; and conforming cross-references.

Section 3: Creates s. 624.51055, F.S., authorizing an insurance premium tax credit to eligible SFOs participating in the scholarship program.

Section 4: Amends s. 1002.20, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 5: Amends s. 1002.23, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 6: Amends s. 1002.39, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

⁵⁰ s. 220.186, F.S. and s. 220.13(2)(k), F.S.

⁵¹ Firefighter and police pension plan funding comes from a number of sources, including the net proceeds from an excise tax levied upon property and casualty insurance companies. See s. 175.101, F.S., and s. 185.08, F.S.

Section 7: Amends s. 1002.421, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 8: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The DOR estimates that implementing the provisions of the bill will cost the agency \$39,932.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The bill appears to have no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies and certain taxpayers will have an opportunity to receive a credit against insurance premium taxes and sales and use taxes and provide children from low-income families an opportunity to receive a scholarship to attend a private school.

D. FISCAL COMMENTS:

The maximum amount of tax credits that may be granted each fiscal year pursuant to the scholarship program remains at \$118 million. By expanding the program to include insurance premium tax credits and sales and use tax credits, there is an increased probability that the \$118 million tax credit cap will be reached and as a result less monies will be available to the general revenue fund.

However, the CITC Program produces a net savings to the state. It is estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.⁵²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

⁵² <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

2. Other:

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program (OSP) violated Article IX, s. 1(a) of the State Constitution, which requires the state to provide “a uniform, efficient, safe, secure, and high quality system of free public schools.” The court found that the OSP was inconsistent with the constitutional requirement **in part** because it transferred tax money “earmarked for public schools that provide basic primary education” and thus, the OSP “diverts funds that would otherwise be provided to the system of free public schools.”⁵³

State sales tax is collected by a dealer or retailer on behalf of the state and, at the moment of collection, sales taxes become state funds. However, the revenue generated by the sales tax has not been earmarked specifically for public education.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The statutory reference to the retaliatory tax needs to be corrected. The reference should be changed from “624.509(1)” to “s. 624.5091.”

It is unclear as to whether a taxpayer receives a sales tax credit, corporate income tax credit, and an insurance premium tax credit for the same contribution.

The \$118 million cap on tax credits authorized under the Florida Tax Credit Scholarship Program is the total amount of corporate income tax credits, sales tax credits, and insurance premium tax credits that may be granted each state fiscal year. This point needs to be clarified in the bill.

The bill appears to allow insurance companies the option of taking a corporate income tax credit or an insurance premium tax credit. As discussed in the OPPAGA report, this provision may increase the number of insurance companies making contributions to the scholarship program, but this would also complicate tax administration.

The bill creates s. 624.51055, F.S, which provides a credit against all taxes due under Chapter 624, F.S. The DOR comments that it is unclear how reconciliation of the credit will be made when the credit can be claimed against numerous taxes that are collected by at least two different agencies.

Other DOR comments include:

Section 212.099, F.S., as created, authorizes a credit against any estimated state sales tax payment for up to 100% of contributions to an eligible nonprofit scholarship-funding organization. The amount of the credit is prohibited from exceeding 75% of the “tax due.” It is not clear whether this is the “tax due” with the return or the amount of the estimated sales tax payment due with the return. It is recommended that on line 40, page 2, replace “tax due.” with “estimated state sales tax payment due with the return.”

When a dealer collects sales tax from a customer, those taxes are state funds at the moment they are collected. Section 2 of the bill provides that “taxes remitted pursuant to chapter 212 against which a credit is taken...are not state funds or revenue of the state or otherwise held in trust for the state.” As the bill is written, it is unclear whether the department would be authorized to audit and enforce the taxes since these taxes “are not state funds.” Additionally, sales and use taxes, including estimated taxes, are subject to penalties and interest for failure to collect or for failure to timely remit the taxes due. As the bill is written, it is not clear whether the state’s penalty and interest provisions for failure to pay or for

⁵³ *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

late payment and to audit for the proper collection and remittance of these taxes would apply.

The sponsor may wish to consider changing the calculation of the alternative minimum tax in s. 220.186, F.S., instead of providing an exception or different calculation for that tax in a section that is unrelated to the alternative minimum tax. One option is to remove lines 120 – 122 on page 5, insert the following as a new section 2. and renumber the remaining sections.

Section 2. Section 220.186(2), Florida Statutes, is amended to read:

220.186 Credit for Florida alternative minimum tax.—

(2) The credit pursuant to this section shall be the amount of the excess, if any, of the tax paid based upon taxable income determined pursuant to s. 220.13(2)(k) over the amount of tax which would have been due based upon taxable income without application of s. 220.13(2)(k), before application of this credit and without application of credit under s. 220.187.

The bill's effective date is July 1, 2009. Additional time is needed to implement the provisions in this bill which include computer programming, notifying taxpayers, and developing forms. Therefore, an effective date of January 1, 2010 is recommended.

DOE comments:

The bill requires the Department of Education to provide the direct certification list to an eligible nonprofit SFO upon request. The direct certification list that the Department of Education receives from the Department of Children and Family Services includes student names, but does not include contact information. Federal and Florida laws give individuals receiving public assistance the right of confidentiality and limit the disclosure of the information. See Title 7 USC s. 2020(e)(8), 7 CFR s. 272.91(c) and Section 414.295 (Food Stamp Program) and 42 USC s. 602(a)(1)(A)(iv), 45 C.F.R. s. 205.50 and Section 414.106, Florida Statutes (Cash Assistance Programs) and 7 CFR s 253 (Food Distribution Program to Indian Reservations). It does not appear that this type of disclosure to an SFO would be allowed under federal regulations. Upon receipt of the direct certification list by the Department of Education for purposes of the Free and Reduced Price Lunch Program, such list would be confidential and protected from disclosure by the National School Lunch Act as well.

Upon the request of an eligible SFO, the Department of Education is required to inform all households receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply for a scholarship. However, the department does not normally send correspondence directly to these eligible households, as it does not currently have address information for these eligible individuals. The school districts are responsible for communicating with households that are eligible for free or reduced-price meals.

Depending on the language used in the scholarship funding organization's notice form, parents might interpret the notice form to mean that the department is requiring the parents to go through the SFO to obtain the scholarship. As the notice is being mailed to the parents by the department, perhaps the notice could be mutually-agreed upon by the department and SFO, or otherwise subject to department review and/or approval.

The scholarship funding organization reimburses the Department of Education for the cost of postage. Is the reimbursement deposited into gross revenue or a Department of Education trust fund? If the latter, this should be clarified.

OPPAGA Comment:

Section 1 of the bill expands the program to include sales tax credits. This provision is a material change in the nature of the program because it would alter the linkage between tax liabilities and decisions to contribute to scholarship funding organizations. In the current program, the corporate entity that incurs a state tax liability makes the decision on whether to pay these funds to the state or to a scholarship funding organization. This would continue to be true if the program were extended to insurance taxes. However, sales taxes are incurred and paid by individual consumers, and corporations simply act as the collection agent when remitting these funds to the Department of Revenue. As a result, citizens who opposed the program would not have the ability to have a voice in directing how their tax payments were to be used; currently they can do so through the electoral process. As a result, this provision may become controversial.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A