

STORAGE NAME: h1049c.ft

DATE: April 23, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1049

RELATING TO: Limited Liability Companies

SPONSOR(S): Representative Lacasa

STATUTE(S) AFFECTED: Sections 220.02, 220.03, 220.13, and 608.471, Florida Statutes

COMPANION BILL(S): SB 1908 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 12 NAYS 0
- (2) FINANCE AND TAXATION YEAS 12 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

The bill exempts limited liability companies (LLCs) from the state corporate income tax. Limited liability companies are currently subject to the tax which is imposed at the rate of 5.5%.

The fiscal impact of exempting LLCs from the state corporate income tax is an estimated \$5.7 million reduction in the General Revenue Fund for the 1997-98 fiscal year. The estimated amount of reduction in the General Revenue Fund for fiscal year 1998-99 is \$4.9 million.

There are amendments traveling with the bill (See Section VI.)

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Limited Liability Company Act of 1982 created the limited liability company (LLC) in Florida. The LLC is a hybrid entity, for liability purposes, it is treated as a corporation, and for federal taxation purposes, it is treated as a partnership. The Florida Limited Liability Company Act was enacted, in part, to attract capital to Florida by offering limited liability in conjunction with federal tax advantages.

Section 220.02, F.S., provides that all limited liability companies are subject to the corporate income tax imposed under Chapter 220, F.S. The stated legislative intent of the corporate tax code is to tax all corporations, organizations, associations, and other artificial entities which benefit from attributes not available to natural persons. These attributes include "perpetual life, transferable ownership..., and limited liability for all owners." Limited liability companies specifically are subject to the corporate income tax, in exchange for the privilege of conducting business, deriving income, or existing within Florida.

Section 220.03, F.S., defines the term "corporation" to include limited liability companies formed under Chapter 608, F.S. Section 220.13, F.S., defines the taxable income of a limited liability company and provides for taxable income as would be required for federal corporate tax return filing.

Section 608.471, F.S., provides that a limited liability company is an "artificial entity" s. 220.02, F.S., and is subject to the corporate income tax.

An October 1996, report by the Department of Revenue estimated that the 1996 state corporate income tax liability of the approximately 3,780 LLCs operating in Florida in year end 1996 was \$3.1 million. If trends from the past couple of years continue, then the Department projects approximately 8,000 LLCs in Florida by the end of calendar year 1997. This could cause the tax liability to double as well, to around \$6.2 million. As of March 1997, there were 4,335 LLCs in Florida.

The growth in the number of LLCs is a relatively recent phenomenon and due, in large part, to changes in how they are treated under federal tax law. Those laws now treat LLCs more like partnerships.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s 220.02, F.S., to exempt from corporate income taxation any limited liability company formed under chapter 608, F.S., and foreign limited liability companies qualified to do business in Florida when such a company is classified as a partnership for federal income tax purposes. It is also amended to exempt from corporate income taxation any member or manager of a limited liability company classified as a partnership for federal income tax purposes. The bill definition of "corporation" is amended to exclude all limited liability companies which are taxable as partnerships for federal income tax purposes.

Section 608.471, F.S., is amended to provide that a limited liability company formed in Florida and any foreign limited liability company authorized to transact business in Florida shall be classified as a partnership, or when classified differently, identically to its classification for federal tax purposes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill decreases the workload of the Department of Revenue by eliminating the responsibility of the Department to collect taxes from LLCs.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

None.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

Yes. The bill removes LLCs from the state corporate income tax.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Please see Effect of Proposed Changes above.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The bill would eliminate all tax revenues generated in Florida by LLCs.

Revenue:	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Revenue Fund	(\$5.7 M)	(\$4.9 M)

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

See III. A.2., above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Limited liability companies would not be subject to the state corporate income tax.

3. Effects on Competition, Private Enterprise and Employment Markets:

The attraction of forming as an LLC would increase.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It appears that amendment #2 by the Committee on Financial Services is incorrectly drafted.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Finance and Taxation adopted one amendment which is traveling with the bill. The amendment authorizes the use of the term "limited liability company" and the abbreviation "L.L.C." when referring to a limited liability company defined in s. 608.406, F.S.

The Committee on Financial Services adopted two amendments.

STORAGE NAME: h1049c.ft

DATE: April 23, 1997

PAGE 8

Amendment #1 is a title amendment changing the reference to corporate income tax.

Amendment #2 establishes that when a subchapter S corporation and its subsidiary are treated as a single entity for federal tax purposes, they will be treated as a single entity for state tax purposes as well.

The fiscal impact of amendment #2 has not yet been determined.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Hilary E. Coggins

Stephen T. Hogge

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Sharon A. Zahner

Keith G. Baker, Ph.D.