

By Representative Lacasa

1                                   A bill to be entitled  
2           An act relating to limited liability companies;  
3           amending s. 220.02, F.S.; revising legislative  
4           intent; providing application; amending s.  
5           220.03, F.S.; revising a definition; amending  
6           s. 220.13, F.S.; redefining the term "taxable  
7           income" as applied to limited liability  
8           companies to exclude income of certain limited  
9           liability companies; amending s. 608.471, F.S.;  
10          exempting certain limited liability companies  
11          from the corporate income tax; providing for  
12          classifying certain limited liability companies  
13          or members or assignees of a member of a  
14          limited liability company for certain taxation  
15          purposes; providing an effective date.

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

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

21           220.02 Legislative intent.--

22           (1) It is the intent of the Legislature in enacting  
23 this code to impose a tax upon all corporations,  
24 organizations, associations, and other artificial entities  
25 which derive from this state or from any other jurisdiction  
26 permanent and inherent attributes not inherent in or available  
27 to natural persons, such as perpetual life, transferable  
28 ownership represented by shares or certificates, and limited  
29 liability for all owners. It is intended that any limited  
30 liability company which is classified as a partnership for  
31 federal income tax purposes and formed under chapter 608 or

1 qualified to do business in this state as a foreign limited  
2 liability company not ~~companies~~ be subject to the tax imposed  
3 by this code. It is the intent of the Legislature to subject  
4 such corporations and other entities to taxation hereunder for  
5 the privilege of conducting business, deriving income, or  
6 existing within this state. This code is not intended to tax,  
7 and shall not be construed so as to tax, any natural person  
8 who engages in a trade, business, or profession in this state  
9 under his or her own or any fictitious name, whether  
10 individually as a proprietorship or in partnership with  
11 others, or as a member or a manager of a limited liability  
12 company classified as a partnership for federal income tax  
13 purposes; any estate of a decedent or incompetent; or any  
14 testamentary trust. However, a corporation or other taxable  
15 entity which is or which becomes partners with one or more  
16 natural persons shall not, merely by reason of being a  
17 partner, exclude from its net income subject to tax its  
18 respective share of partnership net income. This statement of  
19 intent shall be given preeminent consideration in any  
20 construction or interpretation of this code in order to avoid  
21 any conflict between this code and the mandate in s. 5, Art.  
22 VII of the State Constitution that no income tax be levied  
23 upon natural persons who are residents and citizens of this  
24 state.

25 Section 2. Paragraph (e) of subsection (1) of section  
26 220.03, Florida Statutes, 1996 Supplement, is amended to read:

27 220.03 Definitions.--

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

1           (e) "Corporation" includes all domestic corporations;  
2 foreign corporations qualified to do business in this state or  
3 actually doing business in this state; joint-stock companies;  
4 limited liability companies, under chapter 608; common-law  
5 declarations of trust, under chapter 609; corporations not for  
6 profit, under chapter 617; agricultural cooperative marketing  
7 associations, under chapter 618; professional service  
8 corporations, under chapter 621; foreign unincorporated  
9 associations, under chapter 622; private school corporations,  
10 under chapter 623; foreign corporations not for profit which  
11 are carrying on their activities in this state; and all other  
12 organizations, associations, legal entities, and artificial  
13 persons which are created by or pursuant to the statutes of  
14 this state, the United States, or any other state, territory,  
15 possession, or jurisdiction. The term "corporation" does not  
16 include proprietorships, even if using a fictitious name;  
17 partnerships of any type, as such; limited liability companies  
18 which are taxable as partnerships for federal income tax  
19 purposes; state or public fairs or expositions, under chapter  
20 616; estates of decedents or incompetents; testamentary  
21 trusts; or private trusts.

22           Section 3. Paragraph (j) of subsection (2) of section  
23 220.13, Florida Statutes, is amended to read:

24           220.13 "Adjusted federal income" defined.--

25           (2) For purposes of this section, a taxpayer's taxable  
26 income for the taxable year means taxable income as defined in  
27 s. 63 of the Internal Revenue Code and properly reportable for  
28 federal income tax purposes for the taxable year, but subject  
29 to the limitations set forth in paragraph (1)(b) with respect  
30 to the deductions provided by ss. 172 (relating to net  
31 operating losses), 170(d)(2) (relating to excess charitable

1 contributions), 404(a)(1)(D) (relating to excess pension trust  
2 contributions), 404(a)(3)(A) and (B) (to the extent relating  
3 to excess stock bonus and profit-sharing trust contributions),  
4 and 1212 (relating to capital losses) of the Internal Revenue  
5 Code, except that, subject to the same limitations, the term:

6 (j) "Taxable income," in the case of a limited  
7 liability company, other than a limited liability company  
8 classified as a partnership for federal income tax purposes,  
9 as defined in and organized pursuant to chapter 608 or  
10 qualified to do business in this state as a foreign limited  
11 liability company or other than a similar limited liability  
12 company classified as a partnership for federal income tax  
13 purposes and created as an artificial entity pursuant to the  
14 statutes of the United States or any other state, territory,  
15 possession, or jurisdiction, if such limited liability company  
16 or similar entity is taxable as a corporation for federal  
17 income tax purposes ~~absent a federal report and determination~~  
18 ~~of taxable income as a corporation under the Internal Revenue~~  
19 ~~Code~~, means taxable income determined as if such limited  
20 liability company were required to file or had filed a federal  
21 corporate income tax return under the Internal Revenue Code;

22 Section 4. Section 608.471, Florida Statutes, is  
23 amended to read:

24 608.471 Tax exemption on income of certain limited  
25 liability companies ~~company~~.--

26 (1) A limited liability company classified as a  
27 partnership for federal income tax purposes and organized  
28 pursuant to this chapter or qualified to do business in this  
29 state as a foreign limited liability company is not an  
30 "artificial entity" within the purview of s. 220.02 and is not  
31 subject to the tax imposed under chapter 220.

1           (2) The income of a limited liability company which is  
2 classified as a partnership for federal income tax purposes  
3 and which is organized pursuant to this chapter or is  
4 qualified to do business in this state as a foreign limited  
5 liability company shall not be subject to the Florida Income  
6 Tax Code and the tax levied pursuant to chapter 220.

7           (3) For purposes of taxation under chapter 220, a  
8 limited liability company formed in this state or authorized  
9 to transact business in this state as a foreign limited  
10 liability company shall be classified as a partnership unless  
11 classified otherwise for federal income tax purposes, in which  
12 case the limited liability company shall be classified  
13 identically to its classification for federal income tax  
14 purposes. For purposes of taxation under chapter 220, a  
15 member or an assignee of a member of a limited liability  
16 company formed in this state or qualified to do business in  
17 this state as a foreign limited liability company shall be  
18 treated as a resident or nonresident partner unless classified  
19 otherwise for federal income tax purposes, in which case the  
20 member or assignee of a member shall have the same status as  
21 such member or assignee of a member has for federal income tax  
22 purposes. ~~A distribution shall be deemed a "dividend" under s.~~  
23 ~~316 of the Internal Revenue Code as such code is defined in s.~~  
24 ~~220.03.~~

25           Section 5. This act shall take effect July 1, 1997.

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HOUSE SUMMARY

Specifies that limited liability companies classified as partnerships for federal income tax purposes and organized under chapter 608, Florida Statutes, or qualified to do business in this state as a foreign limited liability company are not subject to the corporate income tax imposed under chapter 220, Florida Statutes. See bill for details.