

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. 608.406, F.S.;
10 revising criteria for limited liability company
11 names; amending s. 608.471, F.S.; exempting
12 certain limited liability companies from the
13 corporate income tax; providing for classifying
14 certain limited liability companies or members
15 or assignees of a member of a limited liability
16 company for certain taxation purposes;
17 providing an effective date.

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

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

23 220.02 Legislative intent.--

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

1 liability company which is classified as a partnership for
 2 federal income tax purposes and formed under chapter 608 or
 3 qualified to do business in this state as a foreign limited
 4 liability company not ~~companies~~ be subject to the tax imposed
 5 by this code. It is the intent of the Legislature to subject
 6 such corporations and other entities to taxation hereunder for
 7 the privilege of conducting business, deriving income, or
 8 existing within this state. This code is not intended to tax,
 9 and shall not be construed so as to tax, any natural person
 10 who engages in a trade, business, or profession in this state
 11 under his or her own or any fictitious name, whether
 12 individually as a proprietorship or in partnership with
 13 others, or as a member or a manager of a limited liability
 14 company classified as a partnership for federal income tax
 15 purposes; any estate of a decedent or incompetent; or any
 16 testamentary trust. However, a corporation or other taxable
 17 entity which is or which becomes partners with one or more
 18 natural persons shall not, merely by reason of being a
 19 partner, exclude from its net income subject to tax its
 20 respective share of partnership net income. This statement of
 21 intent shall be given preeminent consideration in any
 22 construction or interpretation of this code in order to avoid
 23 any conflict between this code and the mandate in s. 5, Art.
 24 VII of the State Constitution that no income tax be levied
 25 upon natural persons who are residents and citizens of this
 26 state.

27 Section 2. Paragraph (e) of subsection (1) of section
 28 220.03, Florida Statutes, 1996 Supplement, is amended to read:

29 220.03 Definitions.--

30 (1) SPECIFIC TERMS.--When used in this code, and when
 31 not otherwise distinctly expressed or manifestly incompatible

1 with the intent thereof, the following terms shall have the
2 following meanings:

3 (e) "Corporation" includes all domestic corporations;
4 foreign corporations qualified to do business in this state or
5 actually doing business in this state; joint-stock companies;
6 limited liability companies, under chapter 608; common-law
7 declarations of trust, under chapter 609; corporations not for
8 profit, under chapter 617; agricultural cooperative marketing
9 associations, under chapter 618; professional service
10 corporations, under chapter 621; foreign unincorporated
11 associations, under chapter 622; private school corporations,
12 under chapter 623; foreign corporations not for profit which
13 are carrying on their activities in this state; and all other
14 organizations, associations, legal entities, and artificial
15 persons which are created by or pursuant to the statutes of
16 this state, the United States, or any other state, territory,
17 possession, or jurisdiction. The term "corporation" does not
18 include proprietorships, even if using a fictitious name;
19 partnerships of any type, as such; limited liability companies
20 which are taxable as partnerships for federal income tax
21 purposes; state or public fairs or expositions, under chapter
22 616; estates of decedents or incompetents; testamentary
23 trusts; or private trusts.

24 Section 3. Paragraph (j) of subsection (2) of section
25 220.13, Florida Statutes, is amended to read:

26 220.13 "Adjusted federal income" defined.--

27 (2) For purposes of this section, a taxpayer's taxable
28 income for the taxable year means taxable income as defined in
29 s. 63 of the Internal Revenue Code and properly reportable for
30 federal income tax purposes for the taxable year, but subject
31 to the limitations set forth in paragraph (1)(b) with respect

1 to the deductions provided by ss. 172 (relating to net
2 operating losses), 170(d)(2) (relating to excess charitable
3 contributions), 404(a)(1)(D) (relating to excess pension trust
4 contributions), 404(a)(3)(A) and (B) (to the extent relating
5 to excess stock bonus and profit-sharing trust contributions),
6 and 1212 (relating to capital losses) of the Internal Revenue
7 Code, except that, subject to the same limitations, the term:

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

24 Section 4. Section 608.406, Florida Statutes, is
25 amended to read:

26 608.406 Limited liability company name.--

27 (1) The words "limited liability company" or "limited
28 company," or their abbreviation "L.L.C." or "L.C.," shall be
29 the last words of the name of every limited liability company
30 formed under the provisions of this chapter.

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1 (2) The limited liability name may not contain
2 language stating or implying that the limited liability
3 company is organized for a purpose other than that permitted
4 in this act and its articles of organization.

5 (3) The limited liability name may not contain
6 language stating or implying that the limited liability
7 company is connected with a state or federal government agency
8 or a corporation chartered under the laws of the United
9 States.

10 (4) The limited liability name must be distinguishable
11 upon the records of the Division of Corporations of the
12 Department of State from all other entities or filings, except
13 fictitious name registrations pursuant to s. 865.09, organized
14 or registered under the laws of this state that are on file
15 with the division.

16 (5) Omission of the words "limited liability company"
17 or "limited company," or their abbreviation "L.L.C. or "L.C.,"
18 in the use of the name of the limited liability company shall
19 render any person who participates in the omission, or
20 knowingly acquiesces in it, liable for any indebtedness,
21 damage, or liability occasioned by the omission.

22 Section 5. 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 6. This act shall take effect July 1, 1997.
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