

By Senator Klein

28-309-98

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

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 liability company that 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, 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 that 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. Subsection (2) of section 220.13, Florida  
25 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 (a) "Taxable income," in the case of a life insurance  
9 company subject to the tax imposed by s. 801 of the Internal  
10 Revenue Code, means life insurance company taxable income;  
11 however, for purposes of this code, the total of any amounts  
12 subject to tax under s. 815(a)(2) of the Internal Revenue Code  
13 pursuant to s. 801(c) of the Internal Revenue Code shall not  
14 exceed, cumulatively, the total of any amounts determined  
15 under s. 815(c)(2) of the Internal Revenue Code of 1954, as  
16 amended, from January 1, 1972, to December 31, 1983;  
17 (b) "Taxable income," in the case of an insurance  
18 company subject to the tax imposed by s. 831(b) of the  
19 Internal Revenue Code, means taxable investment income;  
20 (c) "Taxable income," in the case of an insurance  
21 company subject to the tax imposed by s. 831(a) of the  
22 Internal Revenue Code, means insurance company taxable income;  
23 (d) "Taxable income," in the case of a regulated  
24 investment company subject to the tax imposed by s. 852 of the  
25 Internal Revenue Code, means investment company taxable  
26 income;  
27 (e) "Taxable income," in the case of a real estate  
28 investment trust subject to the tax imposed by s. 857 of the  
29 Internal Revenue Code, means the income subject to tax,  
30 computed as provided in s. 857 of the Internal Revenue Code;  
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1           (f) "Taxable income," in the case of a corporation  
2 which is a member of an affiliated group of corporations  
3 filing a consolidated income tax return for the taxable year  
4 for federal income tax purposes, means taxable income of such  
5 corporation for federal income tax purposes as if such  
6 corporation had filed a separate federal income tax return for  
7 the taxable year and each preceding taxable year for which it  
8 was a member of an affiliated group, unless a consolidated  
9 return for the taxpayer and others is required or elected  
10 under s. 220.131;

11           (g) "Taxable income," in the case of a cooperative  
12 corporation or association, means the taxable income of such  
13 organization determined in accordance with the provisions of  
14 ss. 1381 through 1388 of the Internal Revenue Code;

15           (h) "Taxable income," in the case of an organization  
16 which is exempt from the federal income tax by reason of s.  
17 501(a) of the Internal Revenue Code, means its unrelated  
18 business taxable income as determined under s. 512 of the  
19 Internal Revenue Code;

20           (i) "Taxable income," in the case of a corporation for  
21 which there is in effect for the taxable year an election  
22 under s. 1362(a) of the Internal Revenue Code, means the  
23 amounts subject to tax under s. 1374 or s. 1375 of the  
24 Internal Revenue Code for each taxable year;

25           (j) "Taxable income," in the case of a limited  
26 liability company, other than a limited liability company  
27 classified as a partnership for federal income tax purposes,  
28 as defined in and organized pursuant to chapter 608 or  
29 qualified to do business in this state as a foreign limited  
30 liability company or other than a similar limited liability  
31 company classified as a partnership for federal income tax

1 purposes and created as an artificial entity pursuant to the  
2 statutes of the United States or any other state, territory,  
3 possession, or jurisdiction, if such limited liability company  
4 or similar entity is taxable as a corporation for federal  
5 income tax purposes ~~absent a federal report and determination~~  
6 ~~of taxable income as a corporation under the Internal Revenue~~  
7 ~~Code~~, means taxable income determined as if such limited  
8 liability company were required to file or had filed a federal  
9 corporate income tax return under the Internal Revenue Code;

10 (k) "Taxable income," in the case of a taxpayer liable  
11 for the alternative minimum tax as defined in s. 55 of the  
12 Internal Revenue Code, means the alternative minimum taxable  
13 income as defined in s. 55(b)(2) of the Internal Revenue Code,  
14 less the exemption amount computed under s. 55(d) of the  
15 Internal Revenue Code. A taxpayer is not liable for the  
16 alternative minimum tax unless the taxpayer's federal tax  
17 return, or related federal consolidated tax return, if  
18 included in a consolidated return for federal tax purposes,  
19 reflect a liability on the return filed for the alternative  
20 minimum tax as defined in s. 55(b)(2) of the Internal Revenue  
21 Code;

22 (l) "Taxable income," in the case of a taxpayer whose  
23 taxable income is not otherwise defined in this subsection,  
24 means the sum of amounts to which a tax rate specified in s.  
25 11 of the Internal Revenue Code plus the amount to which a tax  
26 rate specified in s. 1201(a)(2) of the Internal Revenue Code  
27 are applied for federal income tax purposes.

28 Section 4. Section 608.406, Florida Statutes, is  
29 amended to read:

30 608.406 Limited liability company name.--  
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1           (1) The words "limited liability company" or "limited  
2 company," or their abbreviation "L.L.C." or "L.C.," shall be  
3 the last words of the name of every limited liability company  
4 formed under the provisions of this chapter.

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

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

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

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

26           Section 5. Section 608.471, Florida Statutes, is  
27 amended to read:

28           608.471 Tax exemption on income of certain limited  
29 liability companies ~~company~~.--

30           (1) A limited liability company classified as a  
31 partnership for federal income tax purposes and organized

1 pursuant to this chapter or qualified to do business in this  
2 state as a foreign limited liability company is not an  
3 "artificial entity" within the purview of s. 220.02 and is not  
4 subject to the tax imposed under chapter 220.

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

11 (3) For purposes of taxation under chapter 220, a  
12 limited liability company formed in this state or authorized  
13 to transact business in this state as a foreign limited  
14 liability company shall be classified as a partnership unless  
15 classified otherwise for federal income tax purposes, in which  
16 case the limited liability company shall be classified  
17 identically to its classification for federal income tax  
18 purposes. For purposes of taxation under chapter 220, a  
19 member or an assignee of a member of a limited liability  
20 company formed in this state or qualified to do business in  
21 this state as a foreign limited liability company shall be  
22 treated as a resident or nonresident partner unless classified  
23 otherwise for federal income tax purposes, in which case the  
24 member or assignee of a member shall have the same status as  
25 such member or assignee of a member has for federal income tax  
26 purposes. ~~A distribution shall be deemed a "dividend" under s.~~  
27 ~~316 of the Internal Revenue Code as such code is defined in s.~~  
28 ~~220.03.~~

29 Section 6. This act shall take effect July 1, 1998.  
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SENATE SUMMARY

Specifies that certain 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 foreign limited liability companies are not subject to the corporate income tax imposed under the Florida Income Tax Code. Modifies definitions and terms. Revises criteria for limited liability company names.