

By Representative Lacasa

1 A bill to be entitled
 2 An act relating to limited liability companies;
 3 amending s. 220.02, F.S.; declaring legislative
 4 intent that certain companies are exempt from
 5 the corporate income tax; revising legislative
 6 intent with respect to the amendment of s.
 7 220.02, F.S., by chapter 98-101, Laws of
 8 Florida; amending s. 220.03, F.S.; redefining
 9 the term "corporation" for purposes of the
 10 corporate income tax; amending s. 220.13, F.S.;
 11 redefining the term "taxable income" of limited
 12 liability companies for purposes of determining
 13 "adjusted federal income"; amending s. 608.471,
 14 F.S.; exempting certain limited liability
 15 companies from income taxation; amending s.
 16 608.441, F.S.; revising conditions under which
 17 a limited liability company will be dissolved;
 18 amending s. 199.023, F.S.; redefining the term
 19 "intangible personal property" for purposes of
 20 the taxation thereof; amending s. 199.185,
 21 F.S.; exempting interests in limited liability
 22 companies from intangible personal property
 23 taxation; providing an effective date.

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

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 27 Section 1. Subsection (1) of section 220.02, Florida
 28 Statutes, 1998 Supplement, is amended to read:

29 220.02 Legislative intent.--

30 (1) It is the intent of the Legislature in enacting
 31 this code to impose a tax upon all corporations,

1 organizations, associations, and other artificial entities
2 that ~~which~~ derive from this state or from any other
3 jurisdiction permanent and inherent attributes not inherent in
4 or available to natural persons, such as perpetual life,
5 transferable ownership represented by shares or certificates,
6 and limited liability for all owners. It is intended that any
7 limited liability company that is classified as a partnership
8 for federal income tax purposes or is a single-member limited
9 liability company that is disregarded as an entity separate
10 from its owner for federal income tax purposes and that is
11 formed under chapter 608 or qualified to do business in this
12 state as a foreign limited liability company not be subject to
13 the tax imposed by this code. It is the intent of the
14 Legislature to subject such corporations and other entities to
15 taxation hereunder for the privilege of conducting business,
16 deriving income, or existing within this state. This code is
17 not intended to tax, and shall not be construed so as to tax,
18 any natural person who engages in a trade, business, or
19 profession in this state under his or her own or any
20 fictitious name, whether individually as a proprietorship or
21 in partnership with others, or as a member or a manager of a
22 limited liability company classified as a partnership for
23 federal income tax purposes; any estate of a decedent or
24 incompetent; or any testamentary trust. However, a
25 corporation or other taxable entity that ~~which~~ is or that
26 ~~which~~ becomes partners with one or more natural persons shall
27 not, merely by reason of being a partner, exclude from its net
28 income subject to tax its respective share of partnership net
29 income. This statement of intent shall be given preeminent
30 consideration in any construction or interpretation of this
31 code in order to avoid any conflict between this code and the

1 mandate in s. 5, Art. VII of the State Constitution that no
2 income tax be levied upon natural persons who are residents
3 and citizens of this state.

4 Section 2. Subsection (2) of section 7 of chapter
5 98-101, Laws of Florida, is amended to read:

6 Section 7.

7 (2) This section shall take effect upon this act
8 becoming a law. The provisions of subsection 220.02(11)
9 relating to qualified subchapter S subsidiaries ~~this section~~
10 are intended to clarify the intent of the Legislature under
11 existing law and are effective with respect to tax years
12 beginning on or after January 1, 1997.

13 Section 3. Paragraph (e) of subsection (1) of section
14 220.03, Florida Statutes, 1998 Supplement, is amended to read:

15 220.03 Definitions.--

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

20 (e) "Corporation" includes all domestic corporations;
21 foreign corporations qualified to do business in this state or
22 actually doing business in this state; joint-stock companies;
23 limited liability companies, under chapter 608; common-law
24 declarations of trust, under chapter 609; corporations not for
25 profit, under chapter 617; agricultural cooperative marketing
26 associations, under chapter 618; professional service
27 corporations, under chapter 621; foreign unincorporated
28 associations, under chapter 622; private school corporations,
29 under chapter 623; foreign corporations not for profit which
30 are carrying on their activities in this state; and all other
31 organizations, associations, legal entities, and artificial

1 persons which are created by or pursuant to the statutes of
2 this state, the United States, or any other state, territory,
3 possession, or jurisdiction. The term "corporation" does not
4 include a proprietorship ~~proprietorships~~, even if using a
5 fictitious name; a partnership ~~partnerships~~ of any type, as
6 such; a limited liability company ~~companies~~ that is ~~are~~
7 taxable as a partnership ~~partnerships~~ for federal income tax
8 purposes or that has a single member and is disregarded as an
9 entity separate from its owner for federal income tax
10 purposes; a state or public ~~fair~~ ~~fairs~~ or exposition
11 ~~expositions~~, under chapter 616; an estate ~~estates~~ of a
12 decedent ~~decedents~~ or an incompetent ~~incompetents~~; a
13 testamentary trust ~~trusts~~; or a private trust ~~trusts~~.

14 Section 4. Subsection (2) of section 220.13, Florida
15 Statutes, 1998 Supplement, is amended to read:

16 220.13 "Adjusted federal income" defined.--

17 (2) For purposes of this section, a taxpayer's taxable
18 income for the taxable year means taxable income as defined in
19 s. 63 of the Internal Revenue Code and properly reportable for
20 federal income tax purposes for the taxable year, but subject
21 to the limitations set forth in paragraph (1)(b) with respect
22 to the deductions provided by ss. 172 (relating to net
23 operating losses), 170(d)(2) (relating to excess charitable
24 contributions), 404(a)(1)(D) (relating to excess pension trust
25 contributions), 404(a)(3)(A) and (B) (to the extent relating
26 to excess stock bonus and profit-sharing trust contributions),
27 and 1212 (relating to capital losses) of the Internal Revenue
28 Code, except that, subject to the same limitations, the term:

29 (a) "Taxable income," in the case of a life insurance
30 company subject to the tax imposed by s. 801 of the Internal
31 Revenue Code, means life insurance company taxable income;

1 however, for purposes of this code, the total of any amounts
2 subject to tax under s. 815(a)(2) of the Internal Revenue Code
3 pursuant to s. 801(c) of the Internal Revenue Code shall not
4 exceed, cumulatively, the total of any amounts determined
5 under s. 815(c)(2) of the Internal Revenue Code of 1954, as
6 amended, from January 1, 1972, to December 31, 1983;

7 (b) "Taxable income," in the case of an insurance
8 company subject to the tax imposed by s. 831(b) of the
9 Internal Revenue Code, means taxable investment income;

10 (c) "Taxable income," in the case of an insurance
11 company subject to the tax imposed by s. 831(a) of the
12 Internal Revenue Code, means insurance company taxable income;

13 (d) "Taxable income," in the case of a regulated
14 investment company subject to the tax imposed by s. 852 of the
15 Internal Revenue Code, means investment company taxable
16 income;

17 (e) "Taxable income," in the case of a real estate
18 investment trust subject to the tax imposed by s. 857 of the
19 Internal Revenue Code, means the income subject to tax,
20 computed as provided in s. 857 of the Internal Revenue Code;

21 (f) "Taxable income," in the case of a corporation
22 which is a member of an affiliated group of corporations
23 filing a consolidated income tax return for the taxable year
24 for federal income tax purposes, means taxable income of such
25 corporation for federal income tax purposes as if such
26 corporation had filed a separate federal income tax return for
27 the taxable year and each preceding taxable year for which it
28 was a member of an affiliated group, unless a consolidated
29 return for the taxpayer and others is required or elected
30 under s. 220.131;

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

5 (h) "Taxable income," in the case of an organization
6 which is exempt from the federal income tax by reason of s.
7 501(a) of the Internal Revenue Code, means its unrelated
8 business taxable income as determined under s. 512 of the
9 Internal Revenue Code;

10 (i) "Taxable income," in the case of a corporation for
11 which there is in effect for the taxable year an election
12 under s. 1362(a) of the Internal Revenue Code, means the
13 amounts subject to tax under s. 1374 or s. 1375 of the
14 Internal Revenue Code for each taxable year;

15 (j) "Taxable income," in the case of a limited
16 liability company, other than a limited liability company that
17 is classified as a partnership for federal income tax purposes
18 or that has a single member and is disregarded as an entity
19 separate from its owner for federal income tax purposes, as
20 defined in and organized pursuant to chapter 608 or qualified
21 to do business in this state as a foreign limited liability
22 company or other than a similar limited liability company
23 classified as a partnership for federal income tax purposes
24 and created as an artificial entity pursuant to the statutes
25 of the United States or any other state, territory,
26 possession, or jurisdiction, if such limited liability company
27 or similar entity is taxable as a corporation for federal
28 income tax purposes, means taxable income determined as if
29 such limited liability company were required to file or had
30 filed a federal corporate income tax return under the Internal
31 Revenue Code;

1 (k) "Taxable income," in the case of a taxpayer liable
2 for the alternative minimum tax as defined in s. 55 of the
3 Internal Revenue Code, means the alternative minimum taxable
4 income as defined in s. 55(b)(2) of the Internal Revenue Code,
5 less the exemption amount computed under s. 55(d) of the
6 Internal Revenue Code. A taxpayer is not liable for the
7 alternative minimum tax unless the taxpayer's federal tax
8 return, or related federal consolidated tax return, if
9 included in a consolidated return for federal tax purposes,
10 reflect a liability on the return filed for the alternative
11 minimum tax as defined in s. 55(b)(2) of the Internal Revenue
12 Code;

13 (1) "Taxable income," in the case of a taxpayer whose
14 taxable income is not otherwise defined in this subsection,
15 means the sum of amounts to which a tax rate specified in s.
16 11 of the Internal Revenue Code plus the amount to which a tax
17 rate specified in s. 1201(a)(2) of the Internal Revenue Code
18 are applied for federal income tax purposes.

19 Section 5. Section 608.471, Florida Statutes, 1998
20 Supplement, is amended to read:

21 608.471 Tax exemption on income of certain limited
22 liability companies.--

23 (1) A limited liability company classified as a
24 partnership for federal income tax purposes, or a
25 single-member limited liability company that has a single
26 member and is disregarded as an entity separate from its owner
27 for federal income tax purposes, and organized pursuant to
28 this chapter or qualified to do business in this state as a
29 foreign limited liability company is not an "artificial
30 entity" within the purview of s. 220.02 and is not subject to
31 the tax imposed under chapter 220.

1 (2) The income of a limited liability company that is
2 classified as a partnership for federal income tax purposes,
3 or that is a single-member limited liability company that has
4 a single member and is disregarded as an entity separate from
5 its owner for federal income tax purposes,and that is
6 organized pursuant to this chapter or is qualified to do
7 business in this state as a foreign limited liability company
8 shall not be subject to the Florida Income Tax Code and the
9 tax levied pursuant to chapter 220.

10 (3) For purposes of taxation under chapter 220, a
11 limited liability company formed in this state or authorized
12 to transact business in this state as a foreign limited
13 liability company shall be classified as a partnership and any
14 limited liability company that has a single member shall be
15 disregarded as an entity separate from its owner for federal
16 income tax purposes, or, if applicable,~~unless classified~~
17 ~~otherwise for federal income tax purposes, in which case the~~
18 limited liability company shall be classified identically to
19 its classification for federal income tax purposes. For
20 purposes of taxation under chapter 220, a member or an
21 assignee of a member of a limited liability company formed in
22 this state or qualified to do business in this state as a
23 foreign limited liability company shall be treated as a
24 resident or nonresident partner unless classified otherwise
25 for federal income tax purposes, in which case the member or
26 assignee of a member shall have the same status as such member
27 or assignee of a member has for federal income tax purposes.

28 Section 6. Paragraph (d) of subsection (1) of section
29 608.441, Florida Statutes, is amended to read:

30 608.441 Dissolution.--

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1 (1) A limited liability company organized under this
2 chapter shall be dissolved upon the occurrence of any of the
3 following events:

4 (d) When a limited liability company has no ~~fewer than~~
5 ~~two~~ members.

6 Section 7. Paragraph (a) of subsection (1) of section
7 199.023, Florida Statutes, 1998 Supplement, is amended to
8 read:

9 199.023 Definitions.--As used in this chapter:

10 (1) "Intangible personal property" means all personal
11 property which is not in itself intrinsically valuable, but
12 which derives its chief value from that which it represents,
13 including, but not limited to, the following:

14 (a) All stocks or shares of incorporated or
15 unincorporated companies, business trusts, and mutual funds.
16 Any interest as a member in a limited liability company that
17 is classified as a partnership for federal income tax purposes
18 or that is a single-member limited liability company that is
19 disregarded as an entity separate from its owner for federal
20 income tax purposes.

21 Section 8. Paragraph (c) of subsection (1) of section
22 199.185, Florida Statutes, 1998 Supplement, is amended to
23 read:

24 199.185 Property exempted from annual and nonrecurring
25 taxes.--

26 (1) The following intangible personal property shall
27 be exempt from the annual and nonrecurring taxes imposed by
28 this chapter:

29 (c) Any interest as a partner in a partnership, either
30 general or limited, other than any interest as a limited
31 partner in a limited partnership registered with the

1 Securities and Exchange Commission pursuant to the Securities
2 Act of 1933, as amended. Any interest as a member in a limited
3 liability company that is classified as a partnership for
4 federal income tax purposes or that is a single-member limited
5 liability company that is disregarded as an entity separate
6 from its owner for federal income tax purposes.

7 Section 9. This act shall take effect July 1, 1999.

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10 SENATE SUMMARY

11 Provides for exemption of single-member limited liability
12 companies that are disregarded as entities separate from
13 their owners for federal income tax purposes from state
14 corporate income taxation. Provides further that
15 ownership interests in such entities are not subject to
16 intangible personal property taxes.
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