

By Senator Klein

28-638-99

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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