

Bill No. CS for SB 1696

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Klein moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 109, between lines 20 and 21,		
15			
16	insert:		
17	Section 3. Subsection (1) of section 220.02, Florida		
18	Statutes, 1998 Supplement, is amended to read:		
19	220.02 Legislative intent.--		
20	(1) It is the intent of the Legislature in enacting		
21	this code to impose a tax upon all corporations,		
22	organizations, associations, and other artificial entities		
23	<u>that which</u> derive from this state or from any other		
24	jurisdiction permanent and inherent attributes not inherent in		
25	or available to natural persons, such as perpetual life,		
26	transferable ownership represented by shares or certificates,		
27	and limited liability for all owners. It is intended that any		
28	limited liability company that is classified as a partnership		
29	for federal income tax purposes <u>or is a single-member limited</u>		
30	<u>liability company that is disregarded as an entity separate</u>		
31	<u>from its owner for federal income tax purposes and that is</u>		

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1 formed under chapter 608 or qualified to do business in this  
2 state as a foreign limited liability company not be subject to  
3 the tax imposed by this code. If a single-member limited  
4 liability company is disregarded as an entity separate from  
5 its owner for federal income tax purposes, its activities are,  
6 for purposes of taxation under chapter 220, treated in the  
7 same manner as a sole proprietorship, branch, or division of  
8 the owner. It is the intent of the Legislature to subject  
9 such corporations and other entities to taxation hereunder for  
10 the privilege of conducting business, deriving income, or  
11 existing within this state. This code is not intended to tax,  
12 and shall not be construed so as to tax, any natural person  
13 who engages in a trade, business, or profession in this state  
14 under his or her own or any fictitious name, whether  
15 individually as a proprietorship or in partnership with  
16 others, or as a member or a manager of a limited liability  
17 company classified as a partnership for federal income tax  
18 purposes; any estate of a decedent or incompetent; or any  
19 testamentary trust. However, a corporation or other taxable  
20 entity ~~that which~~ is or ~~that which~~ becomes partners with one  
21 or more natural persons shall not, merely by reason of being a  
22 partner, exclude from its net income subject to tax its  
23 respective share of partnership net income. This statement of  
24 intent shall be given preeminent consideration in any  
25 construction or interpretation of this code in order to avoid  
26 any conflict between this code and the mandate in s. 5, Art.  
27 VII of the State Constitution that no income tax be levied  
28 upon natural persons who are residents and citizens of this  
29 state.

30 Section 4. Subsection (2) of section 7 of chapter  
31 98-101, Laws of Florida, is amended to read:

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1           Section 7.

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

8           Section 5. Paragraph (e) of subsection (1) of section  
9 220.03, Florida Statutes, 1998 Supplement, is amended to read:  
10           220.03 Definitions.--

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

15           (e) "Corporation" includes all domestic corporations;  
16 foreign corporations qualified to do business in this state or  
17 actually doing business in this state; joint-stock companies;  
18 limited liability companies, under chapter 608; common-law  
19 declarations of trust, under chapter 609; corporations not for  
20 profit, under chapter 617; agricultural cooperative marketing  
21 associations, under chapter 618; professional service  
22 corporations, under chapter 621; foreign unincorporated  
23 associations, under chapter 622; private school corporations,  
24 under chapter 623; foreign corporations not for profit which  
25 are carrying on their activities in this state; and all other  
26 organizations, associations, legal entities, and artificial  
27 persons which are created by or pursuant to the statutes of  
28 this state, the United States, or any other state, territory,  
29 possession, or jurisdiction. The term "corporation" does not  
30 include a proprietorship ~~proprietorships~~, even if using a  
31 fictitious name; a partnership ~~partnerships~~ of any type, as

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1 such; a limited liability company ~~companies~~ that is ~~are~~  
 2 taxable as a partnership ~~partnerships~~ for federal income tax  
 3 purposes or that has a single member and is disregarded as an  
 4 entity separate from its owner for federal income tax  
 5 purposes; a state or public fair ~~fairs~~ or exposition  
 6 ~~expositions~~, under chapter 616; an estate ~~estates~~ of a  
 7 decedent ~~decedents~~ or an incompetent ~~incompetents~~; a  
 8 testamentary trust ~~trusts~~; or a private trust ~~trusts~~.

9           Section 6. Subsection (2) of section 220.13, Florida  
 10 Statutes, 1998 Supplement, is amended to read:

11           220.13 "Adjusted federal income" defined.--

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

24           (a) "Taxable income," in the case of a life insurance  
 25 company subject to the tax imposed by s. 801 of the Internal  
 26 Revenue Code, means life insurance company taxable income;  
 27 however, for purposes of this code, the total of any amounts  
 28 subject to tax under s. 815(a)(2) of the Internal Revenue Code  
 29 pursuant to s. 801(c) of the Internal Revenue Code shall not  
 30 exceed, cumulatively, the total of any amounts determined  
 31 under s. 815(c)(2) of the Internal Revenue Code of 1954, as

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1 amended, from January 1, 1972, to December 31, 1983;

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

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

8 (d) "Taxable income," in the case of a regulated  
9 investment company subject to the tax imposed by s. 852 of the  
10 Internal Revenue Code, means investment company taxable  
11 income;

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

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

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

30 (h) "Taxable income," in the case of an organization  
31 which is exempt from the federal income tax by reason of s.

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1 501(a) of the Internal Revenue Code, means its unrelated  
2 business taxable income as determined under s. 512 of the  
3 Internal Revenue Code;

4 (i) "Taxable income," in the case of a corporation for  
5 which there is in effect for the taxable year an election  
6 under s. 1362(a) of the Internal Revenue Code, means the  
7 amounts subject to tax under s. 1374 or s. 1375 of the  
8 Internal Revenue Code for each taxable year;

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

26 (k) "Taxable income," in the case of a taxpayer liable  
27 for the alternative minimum tax as defined in s. 55 of the  
28 Internal Revenue Code, means the alternative minimum taxable  
29 income as defined in s. 55(b)(2) of the Internal Revenue Code,  
30 less the exemption amount computed under s. 55(d) of the  
31 Internal Revenue Code. A taxpayer is not liable for the

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1 alternative minimum tax unless the taxpayer's federal tax  
2 return, or related federal consolidated tax return, if  
3 included in a consolidated return for federal tax purposes,  
4 reflect a liability on the return filed for the alternative  
5 minimum tax as defined in s. 55(b)(2) of the Internal Revenue  
6 Code;

7 (1) "Taxable income," in the case of a taxpayer whose  
8 taxable income is not otherwise defined in this subsection,  
9 means the sum of amounts to which a tax rate specified in s.  
10 11 of the Internal Revenue Code plus the amount to which a tax  
11 rate specified in s. 1201(a)(2) of the Internal Revenue Code  
12 are applied for federal income tax purposes.

13 Section 7. Section 608.471, Florida Statutes, 1998  
14 Supplement, is amended to read:

15 608.471 Tax exemption on income of certain limited  
16 liability companies.--

17 (1) A limited liability company classified as a  
18 partnership for federal income tax purposes, or a  
19 single-member limited liability company that has a single  
20 member and is disregarded as an entity separate from its owner  
21 for federal income tax purposes, and organized pursuant to  
22 this chapter or qualified to do business in this state as a  
23 foreign limited liability company is not an "artificial  
24 entity" within the purview of s. 220.02 and is not subject to  
25 the tax imposed under chapter 220. If a single-member limited  
26 liability company is disregarded as an entity separate from  
27 its owner for federal income tax purposes, its activities are,  
28 for purposes of taxation under chapter 220, treated in the  
29 same manner as a sole proprietorship, branch, or division of  
30 the owner.

31 (2) The income of a limited liability company that is

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

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

27 Section 8. Paragraph (d) of subsection (1) of section  
28 608.441, Florida Statutes, is amended to read:

29 608.441 Dissolution.--

30 (1) A limited liability company organized under this  
31 chapter shall be dissolved upon the occurrence of any of the



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1 following events:

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

4 Section 9. Paragraph (a) of subsection (1) of section  
5 199.023, Florida Statutes, 1998 Supplement, is amended to  
6 read:

7 199.023 Definitions.--As used in this chapter:

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

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

19  
20 (Redesignate subsequent sections.)

21  
22

23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 On page 2, line 16, after the semicolon

26  
27 insert:

28 amending s. 220.02, F.S.; declaring legislative  
29 intent that certain companies are exempt from  
30 the corporate income tax; providing for the tax  
31 treatment of activities of certain

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1           single-member limited liability companies;  
2           revising legislative intent with respect to the  
3           amendment of s. 220.02, F.S., by chapter  
4           98-101, Laws of Florida; amending s. 220.03,  
5           F.S.; redefining the term "corporation" for  
6           purposes of the corporate income tax; amending  
7           s. 220.13, F.S.; redefining the term "taxable  
8           income" of limited liability companies for  
9           purposes of determining "adjusted federal  
10          income"; amending s. 608.471, F.S.; exempting  
11          certain limited liability companies from income  
12          taxation; providing for the tax treatment of  
13          activities of certain single-member limited  
14          liability companies; amending s. 608.441, F.S.;  
15          revising conditions under which a limited  
16          liability company will be dissolved; amending  
17          s. 199.023, F.S.; redefining the term  
18          "intangible personal property" for purposes of  
19          the taxation thereof;

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