

**STORAGE NAME:** h0743a.jud

**DATE:** April 7, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 743

**RELATING TO:** Limited Liability Companies

**SPONSOR(S):** Representative Lacasa

**COMPANION BILL(S):** HB 1943(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) FINANCIAL SERVICES YEAS 8 NAYS 0
  - (2) JUDICIARY YEAS 8 NAYS 0
  - (3) FINANCE & TAXATION
  - (4) GENERAL GOVERNMENT APPROPRIATIONS
  - (5)
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**I. SUMMARY:**

This bill would permit limited liability companies (LLC's) which have merged with other business entities to be identified with an "affiliated group of corporations," as defined by Section 199.023(8), F.S. (1998 Supp.). Additionally, the bill authorizes such LLC's to file a consolidated intangible tax return with that group pursuant to Section 199.052, F.S. (1998 Supp.).

Fiscal Impact: According to the Department of Banking and Finance, the bill appears to be revenue neutral.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1998, SB 704 amended Chapters 607 (Corporations), 608 (LLC's), and 620 (Partnerships), F.S. to permit mergers of Florida corporations, limited liability companies, and limited partnerships with or into each other and with or into other business entities both domestic or foreign.<sup>1</sup>

For purposes of paying intangible tax under the Florida Tax Code, an "affiliated group of corporations," as defined by Section 199.023(8) F.S. (1998 Supp.), may elect to file a consolidated intangible tax return. Section 199.052(10), F.S. (1998 Supp.)<sup>2</sup> This means that a chain of corporations connected through stock ownership with a common parent corporation may consolidate its collective intangible tax liability and file one return for the group.<sup>3</sup>

Although LLC's are permitted to merge with each other or into other business entities, they do not fall into the definition of "affiliated group of corporations" pursuant to s. 199.023(8), F.S. (1998 Supp.), and may not file a consolidated intangible tax return.

B. EFFECT OF PROPOSED CHANGES:

This bill would amend s. 199.023(8), F.S. (1998 Supp.), to include "a membership interest" as a means of affiliation. This amendment would include LLC's in the definition of "an affiliated group of corporations" Section 199.023(8), F.S. (1998 Supp.), thereby allowing them to file a consolidated annual intangible tax return under the provisions of s. 199.052(10), F.S. (1998 Supp.).

This bill would permit limited liability companies (LLC's) to join with an "affiliated group of corporations," as defined by s. 199.023(8), F.S. (1998 Supp.), and file a consolidated intangible tax return pursuant to s. 199.052, F.S. (1998 Supp.).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

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<sup>1</sup> SB 704 (Chapter 98-101, Laws of Florida) became law on May 22, 1998.

<sup>2</sup> Section 199.052(10), F.S. (1998 Supp.) provides that "an affiliated group of corporations may elect to make a consolidated return for any year."

<sup>3</sup> "Affiliated group of corporations" means one or more chains of corporations connected through stock ownership with a common parent corporation, providing that: (a) stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each corporation, except for the common parent corporation, is owned directly by one or more of the other corporations; and (b) the common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other corporations. Section 199.023(8), F.S. (1998 Supp.)

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not reduce an agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill would permit LLC's that are part of a chain connected through stock ownership or a membership interest with a common parent corporation to have the option of filing a consolidated intangible tax return.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?  
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?  
No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 199.023 (1998 Supp.), and 199.052 (1998 Supp.), F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 199.023(8), F.S. (1998 Supp.), to expand the definition of “affiliated group of corporations” to include “or a membership interest” as a basis of affiliation.

Includes “or a membership interest” as a provision of the definition in s. 199.023(8)(a), F.S. (1998 Supp.).

Includes “or a membership interest” as a provision of the definition in s. 199.023(8)(b), F.S. (1998 Supp.).

Section 2: Includes “or a membership interest” in statutory provisions pertaining to the filing of consolidated intangible tax returns in s. 199.052(10), F.S. (1998 Supp.).

Section 3: Provides that the act takes effect upon becoming law.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Limited liability companies that have merged pursuant to legislation passed during the 1998 session will now have the option to file a consolidated annual intangible tax return.

The submission of a consolidated return will reduce fees paid to produce the return.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

According to the Department of Banking and Finance, there would not be any fiscal impact to the Department. It is unknown if there would be any direct fiscal impact on the private sector.

The Department of Revenue has not taken a position on whether the bill will reduce intangible tax revenues. The effect of the bill, if any, has not been estimated.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Although Florida law was amended in 1998 to permit corporations, LLC's and partnerships to merge together, this bill only permits LLC's to file a consolidated intangible tax return along with member corporations. Since partnerships are also considered entities separate and apart from its owners, there appears to be no reason why partnerships would not also benefit from this tax advantage.

The change in law has the possible effect of characterizing LLC's as "corporations," for purposes of filing an intangible tax return, which may result in some ambiguity. For instance, currently filed HB 1023 proposes to amend s. 220.03, F.S. (1998 Supp.) to specifically exempt single member LLC's from the definition of "corporation."

The Department of Revenue has raised an issue regarding the definition of "membership interest" under the bill. The Department suggests that this term be defined as a membership interest in a limited liability company so as to forestall confusion over whether partnerships, joint ventures, or other legal entities may be considered part of an affiliated group of companies.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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**DATE:** April 7, 1999  
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