

By Senator Campbell

33-449-01

1                                   A bill to be entitled  
2           An act relating to taxation; amending s.  
3           72.011, F.S.; providing for the venue and  
4           jurisdiction of taxpayer actions in circuit  
5           court; amending s. 199.023, F.S.; redefining  
6           the term "intangible personal property";  
7           amending s. 199.185, F.S.; revising exemptions  
8           from the intangible personal property tax;  
9           amending s. 212.12, F.S.; providing for methods  
10          of determining overpayments by persons paying  
11          the tax on sales, use, and other transactions;  
12          amending s. 213.21, F.S.; revising the process  
13          for review of a taxpayer's liability for tax  
14          and interest; amending s. 220.03, F.S.;  
15          providing for the tax classification of  
16          specified entities; amending s. 608.471, F.S.;  
17          providing for the tax treatment of certain  
18          types of limited liability companies; providing  
19          an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Paragraph (a) of subsection (4) and  
24          subsection (5) of section 72.011, Florida Statutes, are  
25          amended to read:

26           72.011 Jurisdiction of circuit courts in specific tax  
27          matters; administrative hearings and appeals; time for  
28          commencing action; parties; deposits.--

29           (4)(a) Except as provided in paragraph (b), an action  
30          initiated in circuit court pursuant to subsection (1) shall be  
31          filed in the Second Judicial Circuit Court in and for Leon

1 County or in the circuit court in the county where the  
2 taxpayer resides, ~~or~~ maintains its principal commercial  
3 domicile in this state, or regularly maintains its books and  
4 records in this state.

5 (5) The requirements of subsections (1), (2), and (3)  
6 ~~this section~~ are jurisdictional.

7 Section 2. Paragraph (a) of subsection (1) of section  
8 199.023, Florida Statutes, is amended to 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 business entities, all interests in other types  
16 of entities, any interest in a limited liability company, any  
17 interest as a partner in a partnership, either general or  
18 limited, including limited liability partnerships ~~companies,~~  
19 business trusts, and mutual funds.

20 Section 3. Paragraph (c) of subsection (1) of section  
21 199.185, Florida Statutes, is amended to read:

22 199.185 Property exempted from annual and nonrecurring  
23 taxes.--

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

27 (c) Any interest as a shareholder in a corporation, an  
28 owner of an interest in any other type of entity, a member in  
29 a limited liability company, a partner in a partnership,  
30 including a limited liability partnership, either general or  
31 limited, other than any such interest in an entity which

1 interest or entity is ~~interest as a limited partner in a~~  
2 ~~limited partnership~~ registered with the Securities and  
3 Exchange Commission pursuant to the Securities Act of 1933, as  
4 amended.

5 Section 4. Paragraph (d) is added to subsection (6) of  
6 section 212.12, Florida Statutes, to read:

7 212.12 Dealer's credit for collecting tax; penalties  
8 for noncompliance; powers of Department of Revenue in dealing  
9 with delinquents; brackets applicable to taxable transactions;  
10 records required.--

11 (6)

12 (d) A taxpayer is entitled, both in connection with an  
13 audit and in connection with an application for refund filed  
14 independently of any audit, to establish the amount of an  
15 overpayment through statistical sampling. Alternatively, a  
16 taxpayer is entitled to establish an overpayment through any  
17 other sampling method agreed upon by the taxpayer and the  
18 department.

19 Section 5. Paragraph (a) of subsection (3) of section  
20 213.21, Florida Statutes, is amended to read:

21 213.21 Informal conferences; compromises.--

22 (3)(a) A taxpayer's liability for any tax or interest  
23 specified in s. 72.011(1) may be compromised by the department  
24 upon the grounds of doubt as to liability for or  
25 collectibility of such tax or interest. A taxpayer's liability  
26 for penalties under any of the chapters specified in s.  
27 72.011(1) shall ~~may~~ be settled or compromised if it is  
28 determined by the department that the noncompliance is due to  
29 reasonable cause and not to willful negligence, willful  
30 neglect, or fraud. The facts and circumstances are subject to  
31 de novo review to determine the existence of reasonable cause

1 in any administrative proceeding or judicial action  
2 challenging an assessment of penalty under any of the chapters  
3 specified in s. 72.011(1).A taxpayer who establishes  
4 reasonable reliance on the written advice issued by the  
5 department to the taxpayer will be deemed to have shown  
6 reasonable cause for the noncompliance. ~~In addition, a~~  
7 ~~taxpayer's liability for penalties under any of the chapters~~  
8 ~~specified in s. 72.011(1) in excess of 25 percent of the tax~~  
9 ~~shall be settled or compromised if the department determines~~  
10 ~~that the noncompliance is due to reasonable cause and not to~~  
11 ~~willful negligence, willful neglect, or fraud.~~The department  
12 shall maintain records of all compromises, and the records  
13 shall state the basis for the compromise. The records of  
14 compromise under this paragraph shall not be subject to  
15 disclosure pursuant to s. 119.07(1) and shall be considered  
16 confidential information governed by the provisions of s.  
17 213.053.

18 Section 6. Subsection (2) of section 220.03, Florida  
19 Statutes, is amended to read:

20 220.03 Definitions.--

21 (2) DEFINITIONAL RULES.--When used in this code and  
22 neither otherwise distinctly expressed nor manifestly  
23 incompatible with the intent thereof:

24 (a) The word "corporation" or "taxpayer" shall be  
25 deemed to include the words "and its successors and assigns"  
26 as if these words, or words of similar import, were  
27 expressed.†

28 (b) Any term used in any section of this code with  
29 respect to the application of, or in connection with, the  
30 provisions of any other section of this code shall have the  
31 same meaning as in such other section.†~~and~~

1           (c) Any term used in this code shall have the same  
2 meaning as when used in a comparable context in the Internal  
3 Revenue Code and other statutes of the United States relating  
4 to federal income taxes, as such code and statutes are in  
5 effect on January 1, 2000. However, if subsection (3) is  
6 implemented, the meaning of any term shall be taken at the  
7 time the term is applied under this code.

8           (d) Notwithstanding any other provision of this  
9 chapter, the tax classification of an entity, including a  
10 single-member entity, as determined under sections 7701 and  
11 7704 of the Internal Revenue Code and the Treasury Regulations  
12 promulgated thereunder, is determinative of the entity's  
13 classification under this chapter.

14           Section 7. Subsection (3) is added to section 608.471,  
15 Florida Statutes, to read:

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

18           (3) Single-member limited liability companies and  
19 other entities that are disregarded for federal income tax  
20 purposes must be treated as separate legal entities for all  
21 non-income-tax purposes. The Department of Revenue shall adopt  
22 rules to take into account that single-member disregarded  
23 entities such as limited liability companies and qualified  
24 subchapter S corporations may be disregarded as separate  
25 entities for federal tax purposes and therefore may report and  
26 account for income, employment, and other taxes under the  
27 taxpayer identification number of the owner of the  
28 single-member entity.

29           Section 8. This act shall take effect July 1, 2001.  
30  
31

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

SENATE SUMMARY

Provides for jurisdiction and venue of certain taxpayer actions in circuit court. Revises exemptions and a definition under the intangible personal property tax. Provides methods for the determination of overpayments by persons paying the tax on sales, use, and other transactions. Revises the process for review of a taxpayer's liability under the revenue laws. Provides for the classification of certain entities under the corporation income tax law. Provides for the treatment of single-member limited liability companies.