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A bill to be entitled

An act relating to corporate income taxation; amending s. 220.02, F.S.; revising legislative intent to subject limited liability companies and subchapter S corporations to the corporate income tax; distinguishing income of certain entities from income of shareholders, partners, or members; amending s. 220.03, F.S.; revising the definitions of corporation and taxpayer to conform; expanding the definition of nonbusiness income; providing a definition of water's edge group; amending s. 220.13, F.S.; revising subtraction adjustments to adjusted federal income for water's edge groups and limited liability companies; revising a definition of taxable income for corporations and limited liability companies; creating s. 220.136, F.S.; providing certain reporting method requirements for water's edge groups; authorizing members of a water's edge group to file a single combined tax return and pay the entire tax due for all members; requiring a water's edge group to file a domestic disclosure spreadsheet under certain circumstances; providing requirements; authorizing the Department of Revenue to adopt implementing and administering rules and forms; amending s. 220.15, F.S.; revising criteria for determining the occurrence of sales of tangible personal property in this state; amending s. 220.64, F.S.; providing for application of the water's edge reporting requirements to the franchise tax imposed on banks and savings associations; amending s. 608.471, F.S.; revising provisions granting a tax exemption on income of certain

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30 limited liability companies to delete certain partnership  
 31 classification provisions; providing applicability;  
 32 providing an effective date.

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

36 Section 1. Subsections (1) and (9) of section 220.02,  
 37 Florida Statutes, are amended to read:

38 220.02 Legislative intent.--

39 (1) It is the intent of the Legislature in enacting this  
 40 code to impose a tax upon all corporations, organizations,  
 41 associations, and other artificial entities which derive from  
 42 this state or from any other jurisdiction permanent and inherent  
 43 attributes not inherent in or available to natural persons, such  
 44 as perpetual life, transferable ownership represented by shares  
 45 or certificates, and limited liability for any ~~all~~ owners. It is  
 46 intended that ~~any~~ limited liability companies and subchapter S  
 47 corporations ~~company that is classified as a partnership for~~  
 48 ~~federal income tax purposes and formed under chapter 608 or~~  
 49 ~~qualified to do business in this state as a foreign limited~~  
 50 ~~liability company~~ not be subject to the tax imposed by this  
 51 code. It is the intent of the Legislature to subject such  
 52 corporations and other entities to taxation hereunder for the  
 53 privilege of conducting business, deriving income, or existing  
 54 within this state. This code is not intended to tax, and shall  
 55 not be construed so as to tax, any natural person who engages in  
 56 a trade, business, or profession in this state under his or her  
 57 own or any fictitious name, whether individually as a  
 58 proprietorship or in partnership with others, ~~or as a member or~~

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59 ~~a manager of a limited liability company classified as a~~  
60 ~~partnership for federal income tax purposes;~~ any estate of a  
61 decedent or incompetent; or any testamentary trust. The income  
62 of a corporation, limited liability company, subchapter S  
63 corporation, or other taxable entity is distinct from the income  
64 of its shareholders, partners, or members. However, a  
65 corporation or other taxable entity which is or which becomes  
66 partners with one or more natural persons shall not, merely by  
67 reason of being a partner, exclude from its net income subject  
68 to tax its respective share of partnership net income. This  
69 statement of intent shall be given preeminent consideration in  
70 any construction or interpretation of this code in order to  
71 avoid any conflict between this code and the mandate in s. 5,  
72 Art. VII of the State Constitution that no income tax be levied  
73 upon natural persons who are residents and citizens of this  
74 state.

75 ~~(9) Notwithstanding any other provision of this chapter,~~  
76 ~~it is the intent of the Legislature that, except as otherwise~~  
77 ~~provided under the Internal Revenue Code, for the purposes of~~  
78 ~~this chapter, the term "qualified subchapter S subsidiary," as~~  
79 ~~that term is defined in s. 1361(b)(3) of the Internal Revenue~~  
80 ~~Code, shall not be treated as a separate corporation or entity~~  
81 ~~from the S corporation parent to which the subsidiary's assets,~~  
82 ~~liabilities, income, deductions, and credits are attributed~~  
83 ~~under s. 1361(b)(3) of the Internal Revenue Code.~~

84 Section 2. Paragraphs (e), (r), and (aa) of subsection (1)  
85 of section 220.03, Florida Statutes, are amended, and paragraph  
86 (hh) is added to said subsection, to read:

87 220.03 Definitions.--

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

92 (e) "Corporation" includes all domestic corporations;  
 93 foreign corporations qualified to do business in this state or  
 94 actually doing business in this state; joint-stock companies;  
 95 limited liability companies, under chapter 608; common-law  
 96 declarations of trust, under chapter 609; corporations not for  
 97 profit, under chapter 617; agricultural cooperative marketing  
 98 associations, under chapter 618; professional service  
 99 corporations, under chapter 621; foreign unincorporated  
 100 associations, under chapter 622; private school corporations,  
 101 under chapter 623; foreign corporations not for profit which are  
 102 carrying on their activities in this state; and all other  
 103 organizations, associations, legal entities, and artificial  
 104 persons which are created by or pursuant to the statutes of this  
 105 state, the United States, or any other state, territory,  
 106 possession, or jurisdiction. The term "corporation" does not  
 107 include proprietorships, even if using a fictitious name;  
 108 partnerships of any type, as such; ~~limited liability companies~~  
 109 ~~that are taxable as partnerships for federal income tax~~  
 110 ~~purposes~~; state or public fairs or expositions, under chapter  
 111 616; estates of decedents or incompetents; testamentary trusts;  
 112 or private trusts.

113 (r) "Nonbusiness income" means rents and royalties from  
 114 real or tangible personal property, capital gains, interest,  
 115 dividends, and patent and copyright royalties, to the extent  
 116 that they do not arise from transactions and activities in the

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117 regular course of the taxpayer's trade or business. The term  
 118 "nonbusiness income" does not include income from tangible and  
 119 intangible property if the acquisition, management, or ~~and~~  
 120 disposition of the property constitutes an ~~constitute~~ integral  
 121 part ~~parts~~ of the taxpayer's regular trade or business  
 122 operations, including amounts received from manufacturing under  
 123 license agreements, or any amounts which could be included in  
 124 apportionable income without violating the due process clause of  
 125 the United States Constitution. For purposes of this definition,  
 126 "income" means gross receipts less all expenses directly or  
 127 indirectly attributable thereto. Functionally related dividends  
 128 are presumed to be business income.

129 (aa) "Taxpayer" means any corporation subject to the tax  
 130 imposed by this code, and includes all corporations for which a  
 131 consolidated return is filed under s. 220.131 or a water's edge  
 132 group return is filed under s. 220.136. However, "taxpayer" does  
 133 not include a corporation having no individuals (including  
 134 individuals employed by an affiliate) receiving compensation in  
 135 this state as defined in s. 220.15 when the only property owned  
 136 or leased by said corporation (including an affiliate) in this  
 137 state is located at the premises of a printer with which it has  
 138 contracted for printing, if such property consists of the final  
 139 printed product, property which becomes a part of the final  
 140 printed product, or property from which the printed product is  
 141 produced.

142 (hh) "Water's edge group" means a group of taxpayers  
 143 related through common ownership whose business activities are  
 144 integrated with, dependent upon, or contribute to a flow of  
 145 value among members of the group. When 50 percent or more of the

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146 outstanding voting stock of a corporation is under direct or  
 147 indirect ownership or control of the group, the group shall be  
 148 considered a water's edge group unless clearly shown by the  
 149 facts and circumstances of the individual case to not be a  
 150 water's edge group. When less than 50 percent of the outstanding  
 151 voting stock of a corporation is under direct or indirect  
 152 ownership or control of the group, all elements of the business  
 153 activities shall be considered in determining whether the group  
 154 qualifies as a water's edge group. The water's edge group shall  
 155 not include the income of any corporation which conducts  
 156 business outside the United States if 80 percent or more of the  
 157 corporation's property and payroll, as determined by the  
 158 apportionment factors described in ss. 220.15 and 220.151, is  
 159 assignable to locations outside the United States. In  
 160 determining whether voting stock is owned indirectly, the  
 161 attribution rules of s. 318 of the Internal Revenue Code shall  
 162 be used. For purposes of this paragraph, the term "United  
 163 States" is restricted to the 50 states, the District of  
 164 Columbia, and Puerto Rico.

165 Section 3. Paragraph (b) of subsection (1) and paragraphs  
 166 (i) and (j) of subsection (2) of section 220.13, Florida  
 167 Statutes, are amended to read:

168 220.13 "Adjusted federal income" defined.--

169 (1) The term "adjusted federal income" means an amount  
 170 equal to the taxpayer's taxable income as defined in subsection  
 171 (2), or such taxable income of more than one taxpayer as  
 172 provided in s. 220.131, for the taxable year, adjusted as  
 173 follows:

174 (b) Subtractions.--

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- 175           1. There shall be subtracted from such taxable income:
- 176           a. The net operating loss deduction allowable for federal
- 177 income tax purposes under s. 172 of the Internal Revenue Code
- 178 for the taxable year,
- 179           b. The net capital loss allowable for federal income tax
- 180 purposes under s. 1212 of the Internal Revenue Code for the
- 181 taxable year,
- 182           c. The excess charitable contribution deduction allowable
- 183 for federal income tax purposes under s. 170(d)(2) of the
- 184 Internal Revenue Code for the taxable year, and
- 185           d. The excess contributions deductions allowable for
- 186 federal income tax purposes under s. 404 of the Internal Revenue
- 187 Code for the taxable year.

188

189 However, a net operating loss and a capital loss shall never be

190 carried back as a deduction to a prior taxable year, but all

191 deductions attributable to such losses shall be deemed net

192 operating loss carryovers and capital loss carryovers,

193 respectively, and treated in the same manner, to the same

194 extent, and for the same time periods as are prescribed for such

195 carryovers in ss. 172 and 1212, respectively, of the Internal

196 Revenue Code. No deduction shall be allowed for net operating

197 losses, net capital losses, or excess contribution deductions

198 under ss. 170(d)(2), 172, 1212, and 404 of the Internal Revenue

199 Code for a non-United States member of a water's edge group.

- 200           2. There shall be subtracted from such taxable income any
- 201 amount to the extent included therein the following:

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202 a. Dividends treated as received from sources without the  
 203 United States, as determined under s. 862 of the Internal  
 204 Revenue Code.

205 b. All amounts included in taxable income under s. 78 or  
 206 s. 951 of the Internal Revenue Code.

207  
 208 However, as to any amount subtracted under this subparagraph,  
 209 there shall be added to such taxable income all expenses  
 210 deducted on the taxpayer's return for the taxable year which are  
 211 attributable, directly or indirectly, to such subtracted amount.  
 212 Further, no amount shall be subtracted with respect to dividends  
 213 paid or deemed paid by a Domestic International Sales  
 214 Corporation.

215 3. There shall be subtracted from such taxable income, to  
 216 the extent included therein, amounts received by a member of a  
 217 water's edge group which was a dividend paid by another member  
 218 of the same water's edge group.

219 ~~4.3-~~ In computing "adjusted federal income" for taxable  
 220 years beginning after December 31, 1976, there shall be allowed  
 221 as a deduction the amount of wages and salaries paid or incurred  
 222 within this state for the taxable year for which no deduction is  
 223 allowed pursuant to s. 280C(a) of the Internal Revenue Code  
 224 (relating to credit for employment of certain new employees).

225 ~~5.4-~~ There shall be subtracted from such taxable income  
 226 any amount of nonbusiness income included therein.

227 ~~6.5-~~ There shall be subtracted any amount of taxes of  
 228 foreign countries allowable as credits for taxable years  
 229 beginning on or after September 1, 1985, under s. 901 of the  
 230 Internal Revenue Code to any corporation which derived less than

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231 20 percent of its gross income or loss for its taxable year  
 232 ended in 1984 from sources within the United States, as  
 233 described in s. 861(a)(2)(A) of the Internal Revenue Code, not  
 234 including credits allowed under ss. 902 and 960 of the Internal  
 235 Revenue Code, withholding taxes on dividends within the meaning  
 236 of sub-subparagraph 2.a., and withholding taxes on royalties,  
 237 interest, technical service fees, and capital gains.

238 7. There shall be subtracted from such taxable income any  
 239 amount of the taxpayer's respective share of income, gain, loss,  
 240 or deduction received from a limited liability company that was  
 241 reported on a return filed under this chapter by the limited  
 242 liability company.

243 ~~8.6.~~ Notwithstanding any other provision of this code,  
 244 except with respect to amounts subtracted pursuant to  
 245 subparagraphs 1. and ~~4. 3.~~, any increment of any apportionment  
 246 factor which is directly related to an increment of gross  
 247 receipts or income which is deducted, subtracted, or otherwise  
 248 excluded in determining adjusted federal income shall be  
 249 excluded from both the numerator and denominator of such  
 250 apportionment factor. Further, all valuations made for  
 251 apportionment factor purposes shall be made on a basis  
 252 consistent with the taxpayer's method of accounting for federal  
 253 income tax purposes.

254 (2) For purposes of this section, a taxpayer's taxable  
 255 income for the taxable year means taxable income as defined in  
 256 s. 63 of the Internal Revenue Code and properly reportable for  
 257 federal income tax purposes for the taxable year, but subject to  
 258 the limitations set forth in paragraph (1)(b) with respect to  
 259 the deductions provided by ss. 172 (relating to net operating

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260 losses), 170(d)(2) (relating to excess charitable  
 261 contributions), 404(a)(1)(D) (relating to excess pension trust  
 262 contributions), 404(a)(3)(A) and (B) (to the extent relating to  
 263 excess stock bonus and profit-sharing trust contributions), and  
 264 1212 (relating to capital losses) of the Internal Revenue Code,  
 265 except that, subject to the same limitations, the term:

266 (i) "Taxable income," in the case of a corporation for  
 267 which there is in effect for the taxable year an election under  
 268 s. 1362(a) of the Internal Revenue Code, means the ordinary  
 269 income or loss from trade or business activity and the amounts  
 270 subject to tax under s. 1374 or s. 1375 of the Internal Revenue  
 271 Code for each taxable year;

272 (j) "Taxable income," in the case of a limited liability  
 273 company, ~~other than a limited liability company classified as a~~  
 274 ~~partnership for federal income tax purposes,~~ as defined in and  
 275 organized pursuant to chapter 608 or qualified to do business in  
 276 this state as a foreign limited liability company or ~~other than~~  
 277 a similar limited liability company ~~classified as a partnership~~  
 278 ~~for federal income tax purposes and~~ created as an artificial  
 279 entity pursuant to the statutes of the United States or any  
 280 other state, territory, possession, or jurisdiction, absent a  
 281 federal report and determination of taxable income as a  
 282 corporation under the Internal Revenue Code ~~if such limited~~  
 283 ~~liability company or similar entity is taxable as a corporation~~  
 284 ~~for federal income tax purposes,~~ means taxable income determined  
 285 as if such limited liability company were required to file or  
 286 had filed a federal corporate income tax return under the  
 287 Internal Revenue Code;

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288 Section 4. Section 220.136, Florida Statutes, is created  
 289 to read:

290 220.136 Water's edge groups; special requirements.--

291 (1) All members of a water's edge group must use the  
 292 water's edge reporting method unless the parent of the water's  
 293 edge group is eligible to make a Florida consolidated return  
 294 election pursuant to s. 220.131(1) and such election is made or  
 295 was previously made. The group electing to make such Florida  
 296 consolidated return shall be composed of the identical component  
 297 members as those which have consolidated their taxable incomes  
 298 in a consolidated return for federal income tax purposes as  
 299 provided in s. 220.131(1)(b). Under the water's edge reporting  
 300 method:

301 (a) Adjusted federal income for purposes of s. 220.12  
 302 means the sum of adjusted federal income for all members of the  
 303 group determined for a concurrent taxable year.

304 (b) The denominators of the apportionment factors shall be  
 305 calculated for all members of the water's edge group combined.

306 (c) The general apportionment method shall be used for all  
 307 members of the water's edge group, unless an alternate method is  
 308 determined to be more appropriate by the department.

309 (d) Intercompany transactions sales made between members  
 310 of the water's edge group shall be eliminated in the computation  
 311 of the sales factor pursuant to ss. 220.15 and 220.151. As used  
 312 in this subsection, the term "sales" includes, but is not  
 313 limited to, loans, payments for intangibles, dividends, and  
 314 management fees.

315 (e) Each taxpayer shall apportion adjusted federal income  
 316 under s. 220.15 as a member of a water's edge group which files

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317 a water's edge return under this section on the basis of  
318 apportionment factors described in s. 220.15. For purposes of  
319 this subsection, each special industry member included in a  
320 water's edge group filing a water's edge return under this  
321 section, which member would otherwise be permitted to use a  
322 special method of apportionment under s. 220.151, shall  
323 construct the numerator of its sales, property, and payroll  
324 factors, respectively, by multiplying the denominator of each  
325 such factor by the premiums or revenue miles factor ratio  
326 otherwise applicable pursuant to s. 220.151 in the manner  
327 prescribed by the department by rule.

328 (f) For purposes of this section, the term "water's edge  
329 reporting method" means the determination of taxable business  
330 profits for a group of entities conducting a unitary business by  
331 adding their combined net income and the additions and  
332 deductions provided in s. 220.13 for members of the group and  
333 apportioning the result as provided in s. 220.15.

334 (2) Members of a water's edge group may elect to file a  
335 single combined tax return and pay the entire tax due for all  
336 taxpayers included in the group.

337 (3) A water's edge group shall be required to file a  
338 domestic disclosure spreadsheet in the manner and form  
339 prescribed in rule by the department. A "domestic disclosure  
340 spreadsheet" means a spreadsheet which fully discloses the  
341 income reported to each state, the state tax liability, the  
342 method used for apportioning or allocating income to the various  
343 states, and other information provided for by rules as may be  
344 necessary to determine the proper amount of tax due to each  
345 state and to identify the water's edge group.

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346       (4) The department may adopt rules and forms as may be  
 347       necessary or appropriate to administer and implement this  
 348       section. It is the intent of the Legislature, by this section,  
 349       to grant to the department extensive authority to adopt rules  
 350       and forms describing and defining principles for determining the  
 351       existence of a water's edge group, the water's edge business  
 352       principle, indicators of a water's edge business, definitions of  
 353       common control, methods of reporting, and related forms,  
 354       principles, and definitions.

355             Section 5. Paragraph (b) of subsection (5) of section  
 356       220.15, Florida Statutes, is amended to read:

357             220.15 Apportionment of adjusted federal income.--

358             (5) The sales factor is a fraction the numerator of which  
 359       is the total sales of the taxpayer in this state during the  
 360       taxable year or period and the denominator of which is the total  
 361       sales of the taxpayer everywhere during the taxable year or  
 362       period.

363             (b)1. Sales of tangible personal property occur in this  
 364       state if the property is delivered or shipped to a purchaser  
 365       within this state, regardless of the f.o.b. point, other  
 366       conditions of the sale, or ultimate destination of the property,  
 367       unless shipment is made via a common or contract carrier, or if  
 368       the property is shipped from an office, store, warehouse,  
 369       factory, or other place of storage in this state, and the  
 370       purchaser is the United States Government or the actual entity  
 371       making the sale is not subject to a tax upon or measured by  
 372       income in the state to which the sale would be assigned absent  
 373       this paragraph. However, for industries in SIC Industry Number  
 374       2037, if the ultimate destination of the product is to a

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375 location outside this state, regardless of the method of  
 376 shipment or f.o.b. point, the sale shall not be deemed to occur  
 377 in this state.

378 2. When citrus fruit is delivered by a cooperative for a  
 379 grower-member, by a grower-member to a cooperative, or by a  
 380 grower-participant to a Florida processor, the sales factor for  
 381 the growers for such citrus fruit delivered to such processor  
 382 shall be the same as the sales factor for the most recent  
 383 taxable year of that processor. That sales factor, expressed  
 384 only as a percentage and not in terms of the dollar volume of  
 385 sales, so as to protect the confidentiality of the sales of the  
 386 processor, shall be furnished on the request of such a grower  
 387 promptly after it has been determined for that taxable year.

388 3. Reimbursement of expenses under an agency contract  
 389 between a cooperative, a grower-member of a cooperative, or a  
 390 grower and a processor is not a sale within this state.

391 Section 6. Section 220.64, Florida Statutes, is amended to  
 392 read:

393 220.64 Other provisions applicable to franchise tax.--To  
 394 the extent that they are not manifestly incompatible with the  
 395 provisions of this part, parts I, III, IV, V, VI, VIII, IX, and  
 396 X of this code and ss. 220.12, 220.13, 220.136, 220.15, and  
 397 220.16 apply to the franchise tax imposed by this part. Under  
 398 rules prescribed in s. 220.131, a consolidated return may be  
 399 filed by any affiliated group of corporations composed of one or  
 400 more banks or savings associations, its or their Florida parent  
 401 corporation, and any nonbank or nonsavings subsidiaries of such  
 402 parent corporation.

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403 Section 7. Section 608.471, Florida Statutes, is amended  
 404 to read:

405 608.471 Tax exemption on income of certain limited  
 406 liability companies.--

407 (1) A limited liability company ~~classified as a~~  
 408 ~~partnership for federal income tax purposes, or a single member~~  
 409 ~~limited liability company which is disregarded as an entity~~  
 410 ~~separate from its owner for federal income tax purposes, and~~  
 411 organized pursuant to this chapter or qualified to do business  
 412 in this state as a foreign limited liability company is not an  
 413 "artificial entity" within the purview of s. 220.02 and is not  
 414 subject to the tax imposed under chapter 220. A distribution  
 415 shall be deemed a "dividend" under s. 316 of the Internal  
 416 Revenue Code as such code is defined in s. 220.03. ~~If a single~~  
 417 ~~member limited liability company is disregarded as an entity~~  
 418 ~~separate from its owner for federal income tax purposes, its~~  
 419 ~~activities are, for purposes of taxation under chapter 220,~~  
 420 ~~treated in the same manner as a sole proprietorship, branch, or~~  
 421 ~~division of the owner.~~

422 (2) ~~For purposes of taxation under chapter 220, a limited~~  
 423 ~~liability company formed in this state or authorized to transact~~  
 424 ~~business in this state as a foreign limited liability company~~  
 425 ~~shall be classified as a partnership, or a limited liability~~  
 426 ~~company which has only one member shall be disregarded as an~~  
 427 ~~entity separate from its owner for federal income tax purposes,~~  
 428 ~~unless classified otherwise for federal income tax purposes, in~~  
 429 ~~which case the limited liability company shall be classified~~  
 430 ~~identically to its classification for federal income tax~~  
 431 ~~purposes. For purposes of taxation under chapter 220, a member~~

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432 ~~or an assignee of a member of a limited liability company formed~~  
 433 ~~in this state or qualified to do business in this state as a~~  
 434 ~~foreign limited liability company shall be treated as a resident~~  
 435 ~~or nonresident partner unless classified otherwise for federal~~  
 436 ~~income tax purposes, in which case the member or assignee of a~~  
 437 ~~member shall have the same status as such member or assignee of~~  
 438 ~~a member has for federal income tax purposes.~~

439 (2)~~(3)~~ Single-member limited liability companies and other  
 440 entities that are disregarded for federal income tax purposes  
 441 must be treated as separate legal entities for all non-income-  
 442 tax purposes. The Department of Revenue shall adopt rules to  
 443 take into account that single-member disregarded entities such  
 444 as limited liability companies and qualified subchapter S  
 445 corporations may be disregarded as separate entities for federal  
 446 tax purposes and therefore may report and account for income,  
 447 employment, and other taxes under the taxpayer identification  
 448 number of the owner of the single-member entity.

449 Section 8. This act shall take effect July 1, 2004, and  
 450 shall apply to tax years ending on or after December 31, 2004.