

By Senator Miller

18-1448-04

See HB

1 A bill to be entitled
2 An act relating to corporate income taxation;
3 amending s. 220.02, F.S.; revising legislative
4 intent to subject limited liability companies
5 and subchapter S corporations to the corporate
6 income tax; distinguishing income of certain
7 entities from income of shareholders, partners,
8 or members; amending s. 220.03, F.S.; revising
9 the definitions of corporation and taxpayer to
10 conform; expanding the definition of
11 nonbusiness income; providing a definition of
12 water's edge group; amending s. 220.13, F.S.;
13 revising subtraction adjustments to adjusted
14 federal income for water's edge groups and
15 limited liability companies; revising a
16 definition of taxable income for corporations
17 and limited liability companies; creating s.
18 220.136, F.S.; providing certain reporting
19 method requirements for water's edge groups;
20 authorizing members of a water's edge group to
21 file a single combined tax return and pay the
22 entire tax due for all members; requiring a
23 water's edge group to file a domestic
24 disclosure spreadsheet under certain
25 circumstances; providing requirements;
26 authorizing the Department of Revenue to adopt
27 implementing and administering rules and forms;
28 amending s. 220.15, F.S.; revising criteria for
29 determining the occurrence of sales of tangible
30 personal property in this state; amending s.
31 220.64, F.S.; providing for application of the

1 water's edge reporting requirements to the
2 franchise tax imposed on banks and savings
3 associations; amending s. 608.471, F.S.;
4 revising provisions granting a tax exemption on
5 income of certain limited liability companies
6 to delete certain partnership classification
7 provisions; providing applicability; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsections (1) and (9) of section 220.02,
13 Florida Statutes, are amended to read:

14 220.02 Legislative intent.--

15 (1) It is the intent of the Legislature in enacting
16 this code to impose a tax upon all corporations,
17 organizations, associations, and other artificial entities
18 which derive from this state or from any other jurisdiction
19 permanent and inherent attributes not inherent in or available
20 to natural persons, such as perpetual life, transferable
21 ownership represented by shares or certificates, and limited
22 liability for any ~~all~~ owners. It is intended that ~~any~~ limited
23 liability companies and subchapter S corporations ~~company that~~
24 ~~is classified as a partnership for federal income tax purposes~~
25 ~~and formed under chapter 608 or qualified to do business in~~
26 ~~this state as a foreign limited liability company~~ not be
27 subject to the tax imposed by this code. It is the intent of
28 the Legislature to subject such corporations and other
29 entities to taxation hereunder for the privilege of conducting
30 business, deriving income, or existing within this state. This
31 code is not intended to tax, and shall not be construed so as

1 to tax, any natural person who engages in a trade, business,
2 or profession in this state under his or her own or any
3 fictitious name, whether individually as a proprietorship or
4 in partnership with others, ~~or as a member or a manager of a~~
5 ~~limited liability company classified as a partnership for~~
6 ~~federal income tax purposes~~; any estate of a decedent or
7 incompetent; or any testamentary trust. The income of a
8 corporation, limited liability company, subchapter S
9 corporation, or other taxable entity is distinct from the
10 income of its shareholders, partners, or members. However, a
11 corporation or other taxable entity which is or which becomes
12 partners with one or more natural persons shall not, merely by
13 reason of being a partner, exclude from its net income subject
14 to tax its respective share of partnership net income. This
15 statement of intent shall be given preeminent consideration in
16 any construction or interpretation of this code in order to
17 avoid any conflict between this code and the mandate in s. 5,
18 Art. VII of the State Constitution that no income tax be
19 levied upon natural persons who are residents and citizens of
20 this state.

21 ~~(9) Notwithstanding any other provision of this~~
22 ~~chapter, it is the intent of the Legislature that, except as~~
23 ~~otherwise provided under the Internal Revenue Code, for the~~
24 ~~purposes of this chapter, the term "qualified subchapter S~~
25 ~~subsidiary," as that term is defined in s. 1361(b)(3) of the~~
26 ~~Internal Revenue Code, shall not be treated as a separate~~
27 ~~corporation or entity from the S corporation parent to which~~
28 ~~the subsidiary's assets, liabilities, income, deductions, and~~
29 ~~credits are attributed under s. 1361(b)(3) of the Internal~~
30 ~~Revenue Code.~~

31

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

4 220.03 Definitions.--

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

9 (e) "Corporation" includes all domestic corporations;
10 foreign corporations qualified to do business in this state or
11 actually doing business in this state; joint-stock companies;
12 limited liability companies, under chapter 608; common-law
13 declarations of trust, under chapter 609; corporations not for
14 profit, under chapter 617; agricultural cooperative marketing
15 associations, under chapter 618; professional service
16 corporations, under chapter 621; foreign unincorporated
17 associations, under chapter 622; private school corporations,
18 under chapter 623; foreign corporations not for profit which
19 are carrying on their activities in this state; and all other
20 organizations, associations, legal entities, and artificial
21 persons which are created by or pursuant to the statutes of
22 this state, the United States, or any other state, territory,
23 possession, or jurisdiction. The term "corporation" does not
24 include proprietorships, even if using a fictitious name;
25 partnerships of any type, as such; ~~limited liability companies~~
26 ~~that are taxable as partnerships for federal income tax~~
27 ~~purposes~~; state or public fairs or expositions, under chapter
28 616; estates of decedents or incompetents; testamentary
29 trusts; or private trusts.

30 (r) "Nonbusiness income" means rents and royalties
31 from real or tangible personal property, capital gains,

1 interest, dividends, and patent and copyright royalties, to
2 the extent that they do not arise from transactions and
3 activities in the regular course of the taxpayer's trade or
4 business. The term "nonbusiness income" does not include
5 income from tangible and intangible property if the
6 acquisition, management, or ~~and~~ disposition of the property
7 constitutes an ~~constitute~~ integral part ~~parts~~ of the
8 taxpayer's regular trade or business operations, including
9 amounts received from manufacturing under license agreements,
10 or any amounts which could be included in apportionable income
11 without violating the due process clause of the United States
12 Constitution. For purposes of this definition, "income" means
13 gross receipts less all expenses directly or indirectly
14 attributable thereto. Functionally related dividends are
15 presumed to be business income.

16 (aa) "Taxpayer" means any corporation subject to the
17 tax imposed by this code, and includes all corporations for
18 which a consolidated return is filed under s. 220.131 or a
19 water's edge group return is filed under s. 220.136. However,
20 "taxpayer" does not include a corporation having no
21 individuals (including individuals employed by an affiliate)
22 receiving compensation in this state as defined in s. 220.15
23 when the only property owned or leased by said corporation
24 (including an affiliate) in this state is located at the
25 premises of a printer with which it has contracted for
26 printing, if such property consists of the final printed
27 product, property which becomes a part of the final printed
28 product, or property from which the printed product is
29 produced.

30 (hh) "Water's edge group" means a group of taxpayers
31 related through common ownership whose business activities are

1 integrated with, dependent upon, or contribute to a flow of
2 value among members of the group. When 50 percent or more of
3 the outstanding voting stock of a corporation is under direct
4 or indirect ownership or control of the group, the group shall
5 be considered a water's edge group unless clearly shown by the
6 facts and circumstances of the individual case to not be a
7 water's edge group. When less than 50 percent of the
8 outstanding voting stock of a corporation is under direct or
9 indirect ownership or control of the group, all elements of
10 the business activities shall be considered in determining
11 whether the group qualifies as a water's edge group. The
12 water's edge group shall not include the income of any
13 corporation that conducts business outside the United States
14 if 80 percent or more of the corporation's property and
15 payroll, as determined by the apportionment factors described
16 in ss. 220.15 and 220.151, is assignable to locations outside
17 the United States. In determining whether voting stock is
18 owned indirectly, the attribution rules of s. 318 of the
19 Internal Revenue Code shall be used. For purposes of this
20 paragraph, the term "United States" is restricted to the 50
21 states, the District of Columbia, and Puerto Rico.

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

25 220.13 "Adjusted federal income" defined.--

26 (1) The term "adjusted federal income" means an amount
27 equal to the taxpayer's taxable income as defined in
28 subsection (2), or such taxable income of more than one
29 taxpayer as provided in s. 220.131, for the taxable year,
30 adjusted as follows:

31 (b) Subtractions.--

1 1. There shall be subtracted from such taxable income:

2 a. The net operating loss deduction allowable for
3 federal income tax purposes under s. 172 of the Internal
4 Revenue Code for the taxable year,

5 b. The net capital loss allowable for federal income
6 tax purposes under s. 1212 of the Internal Revenue Code for
7 the taxable year,

8 c. The excess charitable contribution deduction
9 allowable for federal income tax purposes under s. 170(d)(2)
10 of the Internal Revenue Code for the taxable year, and

11 d. The excess contributions deductions allowable for
12 federal income tax purposes under s. 404 of the Internal
13 Revenue Code for the taxable year.

14

15 However, a net operating loss and a capital loss shall never
16 be carried back as a deduction to a prior taxable year, but
17 all deductions attributable to such losses shall be deemed net
18 operating loss carryovers and capital loss carryovers,
19 respectively, and treated in the same manner, to the same
20 extent, and for the same time periods as are prescribed for
21 such carryovers in ss. 172 and 1212, respectively, of the
22 Internal Revenue Code. No deduction shall be allowed for net
23 operating losses, net capital losses, or excess contribution
24 deductions under ss. 170(d)(2), 172, 1212, and 404 of the
25 Internal Revenue Code for a non-United States member of a
26 water's edge group.

27 2. There shall be subtracted from such taxable income
28 any amount to the extent included therein the following:

29 a. Dividends treated as received from sources without
30 the United States, as determined under s. 862 of the Internal
31 Revenue Code.

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

3
4 However, as to any amount subtracted under this subparagraph,
5 there shall be added to such taxable income all expenses
6 deducted on the taxpayer's return for the taxable year which
7 are attributable, directly or indirectly, to such subtracted
8 amount. Further, no amount shall be subtracted with respect to
9 dividends paid or deemed paid by a Domestic International
10 Sales Corporation.

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

15 ~~4.3-~~ In computing "adjusted federal income" for
16 taxable years beginning after December 31, 1976, there shall
17 be allowed as a deduction the amount of wages and salaries
18 paid or incurred within this state for the taxable year for
19 which no deduction is allowed pursuant to s. 280C(a) of the
20 Internal Revenue Code (relating to credit for employment of
21 certain new employees).

22 ~~5.4-~~ There shall be subtracted from such taxable
23 income any amount of nonbusiness income included therein.

24 ~~6.5-~~ There shall be subtracted any amount of taxes of
25 foreign countries allowable as credits for taxable years
26 beginning on or after September 1, 1985, under s. 901 of the
27 Internal Revenue Code to any corporation which derived less
28 than 20 percent of its gross income or loss for its taxable
29 year ended in 1984 from sources within the United States, as
30 described in s. 861(a)(2)(A) of the Internal Revenue Code, not
31 including credits allowed under ss. 902 and 960 of the

1 Internal Revenue Code, withholding taxes on dividends within
2 the meaning of sub-subparagraph 2.a., and withholding taxes on
3 royalties, interest, technical service fees, and capital
4 gains.

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

10 ~~8.6.~~ Notwithstanding any other provision of this code,
11 except with respect to amounts subtracted pursuant to
12 subparagraphs 1. and ~~4.3.~~, any increment of any apportionment
13 factor which is directly related to an increment of gross
14 receipts or income which is deducted, subtracted, or otherwise
15 excluded in determining adjusted federal income shall be
16 excluded from both the numerator and denominator of such
17 apportionment factor. Further, all valuations made for
18 apportionment factor purposes shall be made on a basis
19 consistent with the taxpayer's method of accounting for
20 federal income tax purposes.

21 (2) For purposes of this section, a taxpayer's taxable
22 income for the taxable year means taxable income as defined in
23 s. 63 of the Internal Revenue Code and properly reportable for
24 federal income tax purposes for the taxable year, but subject
25 to the limitations set forth in paragraph (1)(b) with respect
26 to the deductions provided by ss. 172 (relating to net
27 operating losses), 170(d)(2) (relating to excess charitable
28 contributions), 404(a)(1)(D) (relating to excess pension trust
29 contributions), 404(a)(3)(A) and (B) (to the extent relating
30 to excess stock bonus and profit-sharing trust contributions),
31

1 and 1212 (relating to capital losses) of the Internal Revenue
2 Code, except that, subject to the same limitations, the term:

3 (i) "Taxable income," in the case of a corporation for
4 which there is in effect for the taxable year an election
5 under s. 1362(a) of the Internal Revenue Code, means the
6 ordinary income or loss from trade or business activity and
7 the 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~~
11 ~~classified as a partnership for federal income tax purposes,~~
12 as defined in and organized pursuant to chapter 608 or
13 qualified to do business in this state as a foreign limited
14 liability company or ~~other than~~ a similar limited liability
15 company ~~classified as a partnership for federal income tax~~
16 ~~purposes and~~ created as an artificial entity pursuant to the
17 statutes of the United States or any other state, territory,
18 possession, or jurisdiction, absent a federal report and
19 determination of taxable income as a corporation under the
20 Internal Revenue Code if such limited liability company or
21 ~~similar entity is taxable as a corporation for federal income~~
22 ~~tax purposes,~~ means taxable income determined as if such
23 limited liability company were required to file or had filed a
24 federal corporate income tax return under the Internal Revenue
25 Code;

26 Section 4. Section 220.136, Florida Statutes, is
27 created to read:

28 220.136 Water's edge groups; special requirements.--

29 (1) All members of a water's edge group must use the
30 water's edge reporting method unless the parent of the water's
31 edge group is eligible to make a Florida consolidated return

1 election pursuant to s. 220.131(1) and such election is made
2 or was previously made. The group electing to make such
3 Florida consolidated return shall be composed of the identical
4 component members as those that have consolidated their
5 taxable incomes in a consolidated return for federal income
6 tax purposes as provided in s. 220.131(1)(b). Under the
7 water's edge reporting method:

8 (a) Adjusted federal income for purposes of s. 220.12
9 means the sum of adjusted federal income for all members of
10 the group determined for a concurrent taxable year.

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

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

17 (d) Intercompany transactions sales made between
18 members of the water's edge group shall be eliminated in the
19 computation of the sales factor pursuant to ss. 220.15 and
20 220.151. As used in this subsection, the term "sales"
21 includes, but is not limited to, loans, payments for
22 intangibles, dividends, and management fees.

23 (e) Each taxpayer shall apportion adjusted federal
24 income under s. 220.15 as a member of a water's edge group
25 that files a water's edge return under this section on the
26 basis of apportionment factors described in s. 220.15. For
27 purposes of this subsection, each special industry member
28 included in a water's edge group filing a water's edge return
29 under this section, which member would otherwise be permitted
30 to use a special method of apportionment under s. 220.151,
31 shall construct the numerator of its sales, property, and

1 payroll factors, respectively, by multiplying the denominator
2 of each such factor by the premiums or revenue miles factor
3 ratio otherwise applicable pursuant to s. 220.151 in the
4 manner prescribed by the department by rule.

5 (f) For purposes of this section, the term "water's
6 edge reporting method" means the determination of taxable
7 business profits for a group of entities conducting a unitary
8 business by adding their combined net income and the additions
9 and deductions provided in s. 220.13 for members of the group
10 and apportioning the result as provided in s. 220.15.

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

14 (3) A water's edge group shall be required to file a
15 domestic disclosure spreadsheet in the manner and form
16 prescribed in rule by the department. A "domestic disclosure
17 spreadsheet" means a spreadsheet that fully discloses the
18 income reported to each state, the state tax liability, the
19 method used for apportioning or allocating income to the
20 various states, and other information provided for by rules as
21 may be necessary to determine the proper amount of tax due to
22 each state and to identify the water's edge group.

23 (4) The department may adopt rules and forms as may be
24 necessary or appropriate to administer and implement this
25 section. It is the intent of the Legislature, by this section,
26 to grant to the department extensive authority to adopt rules
27 and forms describing and defining principles for determining
28 the existence of a water's edge group, the water's edge
29 business principle, indicators of a water's edge business,
30 definitions of common control, methods of reporting, and
31 related forms, principles, and definitions.

1 Section 5. Paragraph (b) of subsection (5) of section
2 220.15, Florida Statutes, is amended to read:

3 220.15 Apportionment of adjusted federal income.--

4 (5) The sales factor is a fraction the numerator of
5 which is the total sales of the taxpayer in this state during
6 the taxable year or period and the denominator of which is the
7 total sales of the taxpayer everywhere during the taxable year
8 or period.

9 (b)1. Sales of tangible personal property occur in
10 this state if the property is delivered or shipped to a
11 purchaser within this state, regardless of the f.o.b. point,
12 other conditions of the sale, or ultimate destination of the
13 property, unless shipment is made via a common or contract
14 carrier, or if the property is shipped from an office, store,
15 warehouse, factory, or other place of storage in this state,
16 and the purchaser is the United States Government or the
17 actual entity making the sale is not subject to a tax upon or
18 measured by income in the state to which the sale would be
19 assigned absent this paragraph. However, for industries in SIC
20 Industry Number 2037, if the ultimate destination of the
21 product is to a location outside this state, regardless of the
22 method of shipment or f.o.b. point, the sale shall not be
23 deemed to occur in this state.

24 2. When citrus fruit is delivered by a cooperative for
25 a grower-member, by a grower-member to a cooperative, or by a
26 grower-participant to a Florida processor, the sales factor
27 for the growers for such citrus fruit delivered to such
28 processor shall be the same as the sales factor for the most
29 recent taxable year of that processor. That sales factor,
30 expressed only as a percentage and not in terms of the dollar
31 volume of sales, so as to protect the confidentiality of the

1 sales of the processor, shall be furnished on the request of
2 such a grower promptly after it has been determined for that
3 taxable year.

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

7 Section 6. Section 220.64, Florida Statutes, is
8 amended to read:

9 220.64 Other provisions applicable to franchise
10 tax.--To the extent that they are not manifestly incompatible
11 with the provisions of this part, parts I, III, IV, V, VI,
12 VIII, IX, and X of this code and ss. 220.12, 220.13, 220.136,
13 220.15, and 220.16 apply to the franchise tax imposed by this
14 part. Under rules prescribed in s. 220.131, a consolidated
15 return may be filed by any affiliated group of corporations
16 composed of one or more banks or savings associations, its or
17 their Florida parent corporation, and any nonbank or
18 nonsavings subsidiaries of such parent corporation.

19 Section 7. Section 608.471, Florida Statutes, is
20 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 single~~
25 ~~member limited liability company which is disregarded as an~~
26 ~~entity separate from its owner for federal income tax~~
27 ~~purposes, and~~ organized pursuant to this chapter or qualified
28 to do business in this state as a foreign limited liability
29 company is not an "artificial entity" within the purview of s.
30 220.02 and is not subject to the tax imposed under chapter
31 220. A distribution shall be deemed a "dividend" under s. 316

1 of the Internal Revenue Code as such code is defined in s.
2 220.03.~~If a single member limited liability company is~~
3 ~~disregarded as an entity separate from its owner for federal~~
4 ~~income tax purposes, its activities are, for purposes of~~
5 ~~taxation under chapter 220, treated in the same manner as a~~
6 ~~sole proprietorship, branch, or division of the owner.~~

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

25 (2)(3) Single-member limited liability companies and
26 other entities that are disregarded for federal income tax
27 purposes must be treated as separate legal entities for all
28 non-income-tax purposes. The Department of Revenue shall adopt
29 rules to take into account that single-member disregarded
30 entities such as limited liability companies and qualified
31 subchapter S corporations may be disregarded as separate

1 entities for federal tax purposes and therefore may report and
2 account for income, employment, and other taxes under the
3 taxpayer identification number of the owner of the
4 single-member entity.

5 Section 8. This act shall take effect July 1, 2004,
6 and shall apply to tax years ending on or after December 31,
7 2004.

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