



346858

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/01/2009 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Finance and Tax (Altman) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Fair Business Competition Act."

Section 2. Paragraph (a) of subsection (15) and paragraph (a) of subsection (16) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context



346858

12 clearly indicates otherwise:

13 (15) "New business" means:

14 (a)1. A business establishing 10 or more jobs to employ 10  
15 or more full-time employees in this state, which manufactures,  
16 processes, compounds, fabricates, or produces for sale items of  
17 tangible personal property at a fixed location and which  
18 comprises an industrial or manufacturing plant;

19 2. A business establishing 25 or more jobs to employ 25 or  
20 more full-time employees in this state, the sales factor of  
21 which, as defined by s. 220.15(4) ~~s. 220.15(5)~~, for the facility  
22 with respect to which it requests an economic development ad  
23 valorem tax exemption is less than 0.50 for each year the  
24 exemption is claimed; or

25 3. An office space in this state owned and used by a  
26 corporation newly domiciled in this state; provided such office  
27 space houses 50 or more full-time employees of such corporation;  
28 provided that such business or office first begins operation on  
29 a site clearly separate from any other commercial or industrial  
30 operation owned by the same business.

31 (16) "Expansion of an existing business" means:

32 (a)1. A business establishing 10 or more jobs to employ 10  
33 or more full-time employees in this state, which manufactures,  
34 processes, compounds, fabricates, or produces for sale items of  
35 tangible personal property at a fixed location and which  
36 comprises an industrial or manufacturing plant; or

37 2. A business establishing 25 or more jobs to employ 25 or  
38 more full-time employees in this state, the sales factor of  
39 which, as defined by s. 220.15(4) ~~s. 220.15(5)~~, for the facility  
40 with respect to which it requests an economic development ad



346858

41 valorem tax exemption is less than 0.50 for each year the  
42 exemption is claimed; provided that such business increases  
43 operations on a site colocated with a commercial or industrial  
44 operation owned by the same business, resulting in a net  
45 increase in employment of not less than 10 percent or an  
46 increase in productive output of not less than 10 percent.

47 Section 3. Paragraph (b) of subsection (5) of section  
48 213.053, Florida Statutes, is amended to read:

49 213.053 Confidentiality and information sharing.—

50 (5) Nothing contained in this section shall prevent the  
51 department from:

52 (b) Disclosing to the Chief Financial Officer the names and  
53 addresses of those taxpayers who have claimed an exemption  
54 pursuant to former s. 199.185(1)(i) or a deduction pursuant to  
55 former s. 220.63(5).

56 Section 4. Section 213.054, Florida Statutes, is amended to  
57 read:

58 213.054 Persons claiming tax exemptions or deductions;  
59 annual report.—The Department of Revenue shall be responsible  
60 for monitoring the utilization of tax deductions authorized  
61 pursuant to chapter 81-179, Laws of Florida. On or before  
62 September 1 of each year, the department shall report to the  
63 Chief Financial Officer the names and addresses of all persons  
64 who have claimed a deduction pursuant to former s. 220.63(5).

65 Section 5. Subsection (1) of section 220.02, Florida  
66 Statutes, is amended to read:

67 220.02 Legislative intent.—

68 (1) It is the intent of the Legislature in enacting this  
69 code to impose a tax upon all corporations, organizations,



346858

70 associations, and other artificial entities which derive from  
71 this state or from any other jurisdiction permanent and inherent  
72 attributes not inherent in or available to natural persons, such  
73 as perpetual life, transferable ownership represented by shares  
74 or certificates, and limited liability for all owners. It is  
75 intended that any limited liability company that is classified  
76 as a partnership for federal income tax purposes and formed  
77 under chapter 608 or qualified to do business in this state as a  
78 foreign limited liability company not be subject to the tax  
79 imposed by this code. It is the intent of the Legislature to  
80 subject such corporations and other entities to taxation  
81 hereunder for the privilege of conducting business, deriving  
82 income, or existing within this state. This code is not intended  
83 to tax, and shall not be construed so as to tax, any natural  
84 person who engages in a trade, business, or profession in this  
85 state under his or her own or any fictitious name, whether  
86 individually as a proprietorship, ~~or~~ in partnership with others  
87 when classified as a partnership for federal income tax  
88 purposes, or as a member or a manager of a limited liability  
89 company classified as a partnership for federal income tax  
90 purposes; any estate of a decedent or incompetent; or any  
91 testamentary trust. However, a corporation or other taxable  
92 entity which is or which becomes partners with one or more  
93 natural persons shall not, merely by reason of being a partner,  
94 exclude from its net income subject to tax its respective share  
95 of partnership net income. It is the intent of the Legislature  
96 to follow the classification of organizations under the Internal  
97 Revenue Code to the greatest extent possible when not in  
98 conflict with the express provisions of this code. This



346858

99 statement of intent shall be given preeminent consideration in  
100 any construction or interpretation of this code in order to  
101 avoid any conflict between this code and the mandate in s. 5,  
102 Art. VII of the State Constitution that no income tax be levied  
103 upon natural persons who are residents and citizens of this  
104 state.

105 Section 6. Paragraphs (e) and (r) of subsection (1) of  
106 section 220.03, Florida Statutes, are amended, and subsection  
107 (6) is added to that section, to read:

108 220.03 Definitions.—

109 (1) SPECIFIC TERMS.—When used in this code, and when not  
110 otherwise distinctly expressed or manifestly incompatible with  
111 the intent thereof, the following terms shall have the following  
112 meanings:

113 (e) "Corporation" includes all domestic corporations;  
114 foreign corporations qualified to do business in this state or  
115 actually doing business in this state; joint-stock companies;  
116 limited liability companies, partnerships, and other entities of  
117 any type which are taxable as corporations for federal income  
118 tax purposes under chapter 608; common-law declarations of  
119 trust, under chapter 609; corporations not for profit, under  
120 chapter 617; agricultural cooperative marketing associations,  
121 under chapter 618; professional service corporations, under  
122 chapter 621; foreign unincorporated associations, under chapter  
123 622; private school corporations, under chapter 623; foreign  
124 corporations not for profit which are carrying on their  
125 activities in this state; and all other organizations,  
126 associations, legal entities, and artificial persons which are  
127 created by or pursuant to the statutes of this state, the United



346858

128 States, or any other state, territory, possession, or  
129 jurisdiction. The term "corporation" does not include  
130 proprietorships, even if using a fictitious name; partnerships  
131 of any type, as such, except as otherwise described in this  
132 paragraph; limited liability companies that are taxable as  
133 partnerships for federal income tax purposes; state or public  
134 fairs or expositions, under chapter 616; estates of decedents or  
135 incompetents; testamentary trusts; or private trusts.

136 (r) "Nonbusiness income" means an amount that cannot be  
137 included in apportionable income ~~rents and royalties from real~~  
138 ~~or tangible personal property, capital gains, interest,~~  
139 ~~dividends, and patent and copyright royalties, to the extent~~  
140 ~~that they do not arise from transactions and activities in the~~  
141 ~~regular course of the taxpayer's trade or business. The term~~  
142 ~~"nonbusiness income" does not include income from tangible and~~  
143 ~~intangible property if the acquisition, management, and~~  
144 ~~disposition of the property constitute integral parts of the~~  
145 ~~taxpayer's regular trade or business operations, or any amounts~~  
146 ~~which could be included in apportionable income without~~  
147 ~~violating the due process clause of the United States~~  
148 ~~Constitution. For purposes of this definition, the term "income"~~  
149 ~~means gross receipts less all items of loss, expense, or~~  
150 ~~deduction, whether directly or indirectly attributable thereto,~~  
151 ~~which were used to reduce adjusted federal income in the current~~  
152 ~~taxable year or in a previous taxable year. For purposes of this~~  
153 ~~definition, "income" means gross receipts less all expenses~~  
154 ~~directly or indirectly attributable thereto. Functionally~~  
155 ~~related dividends are presumed to be business income.~~

156 (6) PARTNERSHIPS.-A corporation that is a general or



346858

157 limited partner in a partnership, as such, that conducts  
158 business in this state, that earns or receives income in this  
159 state, or that exists in this state is subject to taxation under  
160 this chapter when the partnership activities, if conducted  
161 directly by the corporation, would subject the corporation to  
162 taxation under this chapter. In the case of a tiered partnership  
163 arrangement, the activities of any partnership occupying a lower  
164 tier of a tiered partnership arrangement are imputed,  
165 proportionally, to all partners holding interests in the  
166 partnership occupying higher tiers. A "tiered partnership  
167 arrangement" is one in which some or all of the interests in one  
168 partnership, or lower-tier partnership, are held by a second  
169 partnership, or upper-tier partnership. A tiered partnership  
170 arrangement may have two or more tiers. For purposes of this  
171 subsection, the term "partnership" includes a limited liability  
172 company that has made a federal election to be taxed as a  
173 partnership or as a disregarded entity.

174 Section 7. Paragraph (a) of subsection (1) of section  
175 220.13, Florida Statutes, is amended, paragraph (m) is added to  
176 subsection (2) of that section, and subsection (3) is added to  
177 that section, read:

178 220.13 "Adjusted federal income" defined.—

179 (1) The term "adjusted federal income" means an amount  
180 equal to the taxpayer's taxable income as defined in subsection  
181 (2), or such taxable income of more than one taxpayer as  
182 provided in s. 220.131, for the taxable year, adjusted as  
183 follows:

184 (a) *Additions.*—There shall be added to such taxable income:

185 1. The amount of any tax upon or measured by income,



346858

186 excluding taxes based on gross receipts or revenues, paid or  
187 accrued as a liability to the District of Columbia or any state  
188 of the United States which is deductible from gross income in  
189 the computation of taxable income for the taxable year.

190 2. The amount of interest which is excluded from taxable  
191 income under s. 103(a) of the Internal Revenue Code or any other  
192 federal law, less the associated expenses disallowed in the  
193 computation of taxable income under s. 265 of the Internal  
194 Revenue Code or any other law, excluding 60 percent of any  
195 amounts included in alternative minimum taxable income, as  
196 defined in s. 55(b)(2) of the Internal Revenue Code, if the  
197 taxpayer pays tax under s. 220.11(3).

198 3. In the case of a regulated investment company or real  
199 estate investment trust, an amount equal to the excess of the  
200 net long-term capital gain for the taxable year over the amount  
201 of the capital gain dividends attributable to the taxable year.

202 4. That portion of the wages or salaries paid or incurred  
203 for the taxable year which is equal to the amount of the credit  
204 allowable for the taxable year under s. 220.181. This  
205 subparagraph shall expire on the date specified in s. 290.016  
206 for the expiration of the Florida Enterprise Zone Act.

207 5. That portion of the ad valorem school taxes paid or  
208 incurred for the taxable year which is equal to the amount of  
209 the credit allowable for the taxable year under s. 220.182. This  
210 subparagraph shall expire on the date specified in s. 290.016  
211 for the expiration of the Florida Enterprise Zone Act.

212 6. The amount of emergency excise tax paid or accrued as a  
213 liability to this state under chapter 221 which tax is  
214 deductible from gross income in the computation of taxable





346858

215 income for the taxable year.

216 7. That portion of assessments to fund a guaranty  
217 association incurred for the taxable year which is equal to the  
218 amount of the credit allowable for the taxable year.

219 8. In the case of a nonprofit corporation which holds a  
220 pari-mutuel permit and which is exempt from federal income tax  
221 as a farmers' cooperative, an amount equal to the excess of the  
222 gross income attributable to the pari-mutuel operations over the  
223 attributable expenses for the taxable year.

224 9. The amount taken as a credit for the taxable year under  
225 s. 220.1895.

226 10. Up to nine percent of the eligible basis of any  
227 designated project which is equal to the credit allowable for  
228 the taxable year under s. 220.185.

229 11. The amount taken as a credit for the taxable year under  
230 s. 220.187.

231 12. The amount taken as a credit for the taxable year under  
232 s. 220.192.

233 13. The amount taken as a credit for the taxable year under  
234 s. 220.193.

235 14. Any amount in excess of \$25,000 allowable as a  
236 deduction for federal income tax purposes under s. 179 of the  
237 Internal Revenue Code of 1986, as amended, for the taxable year.

238 15. Any amount allowable as a deduction for federal income  
239 tax purposes under s. 167 or s. 168 of the Internal Revenue Code  
240 of 1986, as amended, for the taxable year to the extent that  
241 such amount includes bonus depreciation allowable as deduction  
242 under s. 168(k).

243 16. All expenses directly or indirectly related to a



346858

244 business asset which were treated as nonbusiness income that  
245 were deducted in the year of sale and the 2 previous years. Such  
246 recapture of expenses shall be made in the year the income is  
247 determined to be nonbusiness income and shall recapture those  
248 expenses deducted in the current and in the previous 2 years.

249 (2) For purposes of this section, a taxpayer's taxable  
250 income for the taxable year means taxable income as defined in  
251 s. 63 of the Internal Revenue Code and properly reportable for  
252 federal income tax purposes for the taxable year, but subject to  
253 the limitations set forth in paragraph (1)(b) with respect to  
254 the deductions provided by ss. 172 (relating to net operating  
255 losses), 170(d)(2) (relating to excess charitable  
256 contributions), 404(a)(1)(D) (relating to excess pension trust  
257 contributions), 404(a)(3)(A) and (B) (to the extent relating to  
258 excess stock bonus and profit-sharing trust contributions), and  
259 1212 (relating to capital losses) of the Internal Revenue Code,  
260 except that, subject to the same limitations, the term:

261 (m) "Taxable income," in the case of any partnership,  
262 organization, association, legal entity, or artificial person  
263 taxable as a corporation for federal income tax purposes, means  
264 taxable income determined as if such partnership, organization,  
265 association, legal entity, or artificial person were required to  
266 file or had filed a federal corporate income tax return under  
267 the Internal Revenue Code.

268 (3) The restrictions in this subsection apply with respect  
269 to the deductibility of certain intangible expenses, interest  
270 expenses, and management fees involving a related entity.

271 (a) As used in this subsection, the term:

272 1. "Related entity" means any artificial entity that would



346858

273 be a member of the taxpayer's affiliated group under s. 1504 of  
274 the Internal Revenue Code during all or any portion of the  
275 taxable year, except using an ownership percentage of 50 percent  
276 rather than 80 percent. A related entity includes any entity,  
277 other than a natural person, which would be included in the  
278 affiliated group based upon a 50 percent ownership percentage if  
279 it were organized as a corporation.

280 2. "Intangible expenses" means the following described  
281 amounts to the extent these amounts are allowed as deductions in  
282 determining federal taxable income under the Internal Revenue  
283 Code before the application of any net operating loss deduction  
284 and special deductions for the taxable year:

285 a. Expenses, losses, and costs directly or indirectly for,  
286 related to, or in association with the acquisition, use,  
287 maintenance, management, ownership, sale, exchange, or any other  
288 disposition of intangible property.

289 b. Royalty, patent, technical, trademark, and copyright  
290 fees;

291 c. Licensing fees; or

292 d. Other substantially similar expenses and costs,  
293 including, but not limited to, interest and losses from  
294 factoring transactions.

295 3. "Intangible property" means patents, patent  
296 applications, trade names, trademarks, service marks,  
297 copyrights, trade secrets, and substantially similar types of  
298 intangible assets.

299 4. "Interest expenses" means amounts that are allowed as  
300 deductions under s. 163 of the Internal Revenue Code in  
301 determining federal taxable income before the application of any



346858

302 net operating loss deductions and special deductions for the  
303 taxable year.

304 5. "Management fees" means expenses and costs paid for  
305 services, including, but not limited to, management overhead,  
306 management supervision, accounts receivable and payable,  
307 employee benefit plans, insurance, legal, payroll, data  
308 processing, purchasing, tax, financial and securities, billing,  
309 accounting, reporting and compliance services, or similar  
310 services, only to the extent that the amounts are allowed as a  
311 deduction or cost in determining taxable net income under the  
312 Internal Revenue Code before the application of any net  
313 operating loss deduction and special deductions for the taxable  
314 year.

315 6. "Recipient" means a related entity that is paid an item  
316 of income that corresponds to an intangible expense, interest  
317 expense, or management fee.

318 (b) Except as provided in paragraph (c), in determining its  
319 adjusted federal income under this section and s. 220.131, a  
320 corporation subject to tax shall add to its taxable income  
321 intangible expenses, interest expenses, and management fees that  
322 are paid, accrued, or incurred directly or indirectly with one  
323 or more related entities. For income received from a pass-  
324 through entity or a disregarded entity, the corporation is  
325 deemed to have received its share of both the income and  
326 expenses of the pass-through entity or disregarded entity for  
327 purposes of this subsection.

328 (c) Except as provided in paragraph (d), the addition of  
329 intangible expenses, interest expenses, and management fees  
330 otherwise required in a taxable year under this subsection for a



346858

331 specific related entity transaction is not required if:  
332 1. The taxpayer and the recipient are both included in the  
333 same Florida consolidated tax return filed under s. 220.131 for  
334 the taxable year;  
335 2. The taxpayer and the executive director or his or her  
336 designee agree in writing to alternative computations or  
337 adjustments. The executive director or his or her designee may  
338 approve such agreement only if the taxpayer has clearly  
339 established to the satisfaction of the executive director or his  
340 or her designee that the disallowance of the deduction is  
341 unreasonable and that the proposed alternative method of  
342 determining the measure of the tax accurately reflects the  
343 activity, business, income, and capital of the taxpayers within  
344 this state. The agreement must be signed by the executive  
345 director or his or her designee and may not exceed 4 years;  
346 3. The taxpayer makes a disclosure on its return and  
347 establishes by clear and convincing evidence that:  
348 a. The recipient was subject to an income tax or franchise  
349 tax measured in whole or part by net income in its state or  
350 country of commercial domicile. If the recipient is a foreign  
351 corporation, the foreign nation must have in force a  
352 comprehensive income tax treaty with the United States;  
353 b. The tax base for such tax included the intangible  
354 expense, management fee, or interest expense paid, accrued, or  
355 incurred by the taxpayer;  
356 c. The aggregate effective tax rate applied is no less than  
357 5.5 percent;  
358 d. The transaction did not have Florida tax avoidance as a  
359 principle purpose;



346858

360           e. The recipient regularly engages in the same business  
361 with third parties; and

362           f. The transaction was made at a commercially reasonable  
363 rate and at arm's length terms similar to those with third  
364 parties; or

365           4. The taxpayer makes a disclosure on its return and  
366 establishes by clear and convincing evidence that:

367           a. The related entity, during the same taxable year,  
368 directly or indirectly paid, received, or incurred the amount of  
369 the obligation to or from a person or entity that is not a  
370 related entity;

371           b. The transaction was done for a valid business purpose;

372           c. The payments are limited to a reimbursement of the  
373 amounts paid to a person or entity that is not a related party;  
374 and

375           d. The unrelated entity regularly engages in the same  
376 business with third parties on a substantial basis.

377           (d) The exceptions described in subparagraphs (c)3. and 4.  
378 do not apply:

379           1. To interest paid by a taxpayer in connection with a debt  
380 incurred to acquire the taxpayer's or a related entity's assets  
381 or stock in a transaction referenced in s. 368 of the Internal  
382 Revenue Code. For purposes of this paragraph, acquisition  
383 interest paid by a taxpayer to a person or entity that is not a  
384 related entity shall be treated as if made to a related entity;

385           2. To intangible property acquired directly or indirectly  
386 from the taxpayer or from a related entity;

387           3. If the related entity is primarily engaged in managing,  
388 acquiring, or maintaining intangible property or related party



346858

389 financing and a primary purpose of the transaction was the  
390 avoidance of Florida tax; or

391 4. In those instances where the taxpayer files with the  
392 related entity or the related entity files with another related  
393 entity an income tax return or report where such return or  
394 report is due because of the imposition of a tax on or measured  
395 by income, and where such income tax return or report results in  
396 the elimination of the tax effects from transactions directly or  
397 indirectly between the taxpayer and the related member.

398 (e) To the extent that a taxpayer is required to make an  
399 adjustment under paragraphs (b) and (c) for a specific related  
400 entity transaction, the corresponding related entity shall make  
401 a corresponding subtraction to its taxable income, if subject to  
402 tax in Florida.

403 (f) The amount of a taxpayer's net operating loss carryover  
404 from tax years ending prior to December 31, 2009, to a tax year  
405 ending on or after December 31, 2009, shall be adjusted to  
406 account for the add back of intangible expenses, interest  
407 expenses, and management fees under this subsection. Under no  
408 circumstances may this recalculation increase the amount of a  
409 net operating loss carryover or deduction.

410 (g) This subsection does not require a taxpayer to add to  
411 its Florida net income more than once any amount of interest  
412 expenses, intangible expenses, and management fees that the  
413 taxpayer pays, accrues, or incurs to a related entity.

414 (h) This subsection does not allow any item to be deducted  
415 more than once, does not allow a deduction for any item that is  
416 excluded from income, and does not allow any item to be included  
417 in the Florida taxable income of more than one taxpayer.



346858

418           (i) This subsection does not limit or negate the executive  
419 director's authority to make adjustments under s. 220.131(2), s.  
420 220.44, or s. 220.152.

421           (j) Each taxpayer shall provide the following information  
422 to the department along with its tax return regarding each  
423 related entity transaction:

- 424           a. The name of the recipient;  
425           b. The state or country of domicile of the recipient;  
426           c. The amount paid to the recipient; and  
427           d. A complete description of the payment made to the  
428 recipient.

429           (k) Failure to add back an amount paid directly or  
430 indirectly to a related party or failure to provide complete  
431 information with the tax return is evidence of negligence within  
432 the meaning of s. 220.803(1).

433           Section 8. Subsections (3), (4), and (5) of section  
434 220.131, Florida Statutes, are amended, and subsections (6) and  
435 (7) are added to that section, to read:

436           220.131 Adjusted federal income; affiliated groups.—

437           (3) The filing of a consolidated return for any taxable  
438 year shall require the filing of consolidated returns for all  
439 subsequent taxable years so long as the filing taxpayers remain  
440 members of the affiliated group or, in the case of a group  
441 having component members not subject to tax under this code, so  
442 long as a consolidated return is filed by such group for federal  
443 income tax purposes, ~~unless the director consents to the filing~~  
444 ~~of separate returns.~~

445           (4) The computation of consolidated taxable income for the  
446 members of an affiliated group of corporations subject to tax





346858

447 hereunder shall be made in the same manner and under the same  
448 procedures, including all intercompany adjustments and  
449 eliminations, as are required for consolidating the incomes of  
450 affiliated corporations for the taxable year for federal income  
451 tax purposes in accordance with s. 1502 of the Internal Revenue  
452 Code, and the amount shown as consolidated taxable income shall  
453 be the amount subject to tax under this code. Notwithstanding  
454 the foregoing, a net operating loss that was incurred by a  
455 taxpayer before filing as a member of a consolidated group of  
456 corporations pursuant to this section is limited to that  
457 member's taxable income included in the consolidated taxable  
458 income for the year in which a net operating loss carryover is  
459 sought to be used. If all members of the affiliated group filed  
460 separate Florida corporate income tax returns for all years from  
461 which a net operating loss carryover is available, this  
462 limitation does not apply.

463 (5) Each taxpayer shall apportion adjusted federal income  
464 under s. 220.15 or s. 220.1505 as a member of an affiliated  
465 group which files a consolidated return under this section on  
466 the basis of apportionment factors described in s. 220.15 or s.  
467 220.1505. For the purposes of this subsection, each special  
468 industry member included in an affiliated group filing a  
469 consolidated return hereunder, which member would otherwise be  
470 permitted to use a special method of apportionment under s.  
471 220.151, shall construct the numerator of its sales, property,  
472 and payroll factors, respectively, by multiplying the  
473 denominator of each such factor by the premiums or revenue miles  
474 factor ratio otherwise applicable pursuant to s. 220.151 in the  
475 manner prescribed by the department by rule.



346858

476       (6) For taxable years ending on or after July 1, 2009,  
477 those members of an affiliated group of corporations that filed  
478 Florida consolidated corporate income tax returns pursuant to  
479 the election provided in s. 220.131(1), Florida Statutes (1985),  
480 which allowed such members to make an election within 90 days  
481 after December 20, 1984, or upon filing the member's first  
482 return after December 20, 1984, whichever occurred later, are no  
483 longer eligible to file and shall cease filing a Florida  
484 consolidated corporate income tax return pursuant to that  
485 election.

486       (7) The sales factor, as determined by s. 220.15(4), shall  
487 not include gross receipts from sales between affiliated  
488 corporations that file a consolidated return under this section.  
489 Such amounts shall be excluded from the sales factor even though  
490 income from such sales is included in the computation of taxable  
491 income described in subsection (4) and s. 1502 of the Internal  
492 Revenue Code and the regulations thereunder.

493       Section 9. Section 220.15, Florida Statutes, is amended to  
494 read:

495       220.15 Apportionment of adjusted federal income.—

496       (1) Except as provided in ss. 220.1505, 220.151, and  
497 220.152, adjusted federal income as defined in s. 220.13 shall  
498 be apportioned to this state by taxpayers doing business within  
499 and without this state by multiplying it by an apportionment  
500 fraction composed of a sales factor representing 50 percent of  
501 the fraction, a property factor representing 25 percent of the  
502 fraction, and a payroll factor representing 25 percent of the  
503 fraction. If any factor described in subsection (2), subsection  
504 (4), or subsection (5) has a denominator that is zero or is



346858

505 determined by the department to be insignificant, the relative  
506 weights of the other factors in the denominator of the  
507 apportionment fraction shall be as follows:

508 (a) If the denominators for any two factors are zero or are  
509 insignificant, the weighted percentage for the remaining factor  
510 shall be 100 percent.

511 (b) If the denominator for the sales factor is zero or is  
512 insignificant, the weighted percentage for the property and  
513 payroll factors shall change from 25 percent to 50 percent,  
514 respectively.

515 (c) If the denominator for either the property or payroll  
516 factor is zero or is insignificant, the weighted percentage for  
517 the other shall be 33 1/3 percent, and the weighted percentage  
518 for the sales factor shall be 66 2/3 percent.

519 (2) The property factor is a fraction the numerator of  
520 which is the average value of the taxpayer's real and tangible  
521 personal property owned or rented and used in this state during  
522 the taxable year or period and the denominator of which is the  
523 average value of such property owned or rented and used  
524 everywhere.

525 (a) Real and tangible personal property owned by the  
526 taxpayer shall be valued at original cost. Real and tangible  
527 personal property rented by the taxpayer shall be valued at 8  
528 times the net annual rental rate paid by the taxpayer less any  
529 annual rental rate received from subrentals.

530 (b) The average value of real and tangible personal  
531 property shall be determined by averaging the value at the  
532 beginning and the end of the taxable year or period, unless the  
533 department determines that an averaging of monthly values during



346858

534 the taxable year or period is reasonably required to reflect  
535 properly the average value of the taxpayer's real and tangible  
536 personal property.

537 (c) The property factor fraction shall not include any real  
538 or tangible personal property located in this state with respect  
539 to which it is certified to the Department of Revenue that such  
540 property is dedicated exclusively to research and development  
541 activities performed pursuant to sponsored research contracts  
542 conducted in conjunction with and through a university that is a  
543 member of the State University System or a nonpublic university  
544 that is chartered in Florida and conducts graduate programs at  
545 the professional or doctoral level. The Board of Governors of  
546 the State University System must certify the contracts for  
547 members of the State University System, and the president of the  
548 university must certify the contracts for a nonpublic  
549 university. As used in this paragraph, "sponsored research  
550 contract" means an agreement executed by parties that include at  
551 least the university and the taxpayer. Funding for sponsored  
552 research contracts may be provided from public or private  
553 sources.

554 ~~(3) The property factor used by a financial organization~~  
555 ~~shall also include intangible personal property, except~~  
556 ~~goodwill, which is owned and used in the business, valued at its~~  
557 ~~tax basis for federal income tax purposes. Intangible personal~~  
558 ~~property shall be in this state if it consists of any of the~~  
559 ~~following:~~

560 ~~(a) Coin or currency located in this state;~~

561 ~~(b) Assets in the nature of loans, including balances due~~  
562 ~~from depository institutions, repurchase agreements, federal~~



346858

563 ~~funds sold, and bankers acceptances, which assets are located in~~  
564 ~~this state; installment obligations on loans for which the~~  
565 ~~customer initially applied at an office located in this state;~~  
566 ~~or loans secured by mortgages, deeds of trust, or other liens~~  
567 ~~upon real or tangible personal property located in this state;~~

568 ~~(c) A portion of a participation loan if the office that~~  
569 ~~enters into the participation is located in this state;~~

570 ~~(d) Credit card receivables from customers who reside or~~  
571 ~~who are commercially domiciled in this state;~~

572 ~~(e) Investments in securities that generate business income~~  
573 ~~if the taxpayer's commercial domicile is in the state, unless~~  
574 ~~such securities have acquired a discrete business situs~~  
575 ~~elsewhere;~~

576 ~~(f) Securities used to maintain reserves against deposits~~  
577 ~~to meet federal or state deposit requirements, based on the~~  
578 ~~ratio that total deposits in this state bear to total deposits~~  
579 ~~everywhere;~~

580 ~~(g) Securities held by a state treasurer or other public~~  
581 ~~official or pledged to secure public funds or trust funds~~  
582 ~~deposited with the taxpayer if the office at which the secured~~  
583 ~~deposits are maintained is in this state;~~

584 ~~(h) Leases of tangible personal property to another if the~~  
585 ~~taxpayer's commercial domicile is in the state, unless the~~  
586 ~~taxpayer establishes that the location of the leased tangible~~  
587 ~~personal property is in another state or states for the entire~~  
588 ~~taxable year and the taxpayer is taxable in such other state or~~  
589 ~~states;~~

590 ~~(i) Installment sale agreements originally executed by a~~  
591 ~~taxpayer or its agent to sell real or tangible personal property~~



346858

592 ~~located in this state; or~~

593 ~~(j) Any other intangible personal property located in this~~  
594 ~~state which is used to generate business income.~~

595 ~~(3)(4)~~ The payroll factor is a fraction the numerator of  
596 which is the total amount paid in this state during the taxable  
597 year or period by the taxpayer for compensation and the  
598 denominator of which is the total compensation paid everywhere  
599 during the taxable year or period.

600 (a) As used in this subsection, the term "compensation"  
601 means wages, salaries, commissions, and any other form of  
602 remuneration paid to employees for personal services.

603 (b) Compensation is paid in this state if:

604 1. The employee's service is performed entirely within the  
605 state; or

606 2. The employee's service is performed both within and  
607 without the state, but the service performed without the state  
608 is incidental to the employee's service within the state; or

609 3. Some of the employee's service is performed in the  
610 state, and

611 a. The base of operations or, if there is no base of  
612 operations, the place from which the service is directed or  
613 controlled is in the state, or

614 b. The base of operations or the place from which the  
615 service is directed or controlled is not in any state in which  
616 some part of the service is performed and the employee's  
617 residence is in this state.

618 (c) The payroll factor fraction shall not include any  
619 compensation paid to any employee located in this state when it  
620 is certified to the Department of Revenue that such compensation



346858

621 was paid to employees dedicated exclusively to research and  
622 development activities performed pursuant to sponsored research  
623 contracts conducted in conjunction with and through a university  
624 that is a member of the State University System or a nonpublic  
625 university that is chartered in Florida and conducts graduate  
626 programs at the professional or doctoral level. The Board of  
627 Governors of the State University System must certify the  
628 contracts for members of the State University System, and the  
629 president of the university must certify the contracts for a  
630 nonpublic university. As used in this paragraph, "sponsored  
631 research contract" means an agreement executed by parties that  
632 include at least the university and the taxpayer. Funding for  
633 sponsored research contracts may be provided from public or  
634 private sources.

635 (4)~~(5)~~ The sales factor is a fraction the numerator of  
636 which is the total sales of the taxpayer in this state during  
637 the taxable year or period and the denominator of which is the  
638 total sales of the taxpayer everywhere during the taxable year  
639 or period.

640 (a) As used in this subsection, the term "sales" means all  
641 gross receipts of the taxpayer except interest, dividends,  
642 rents, royalties, and gross receipts from the sale, exchange,  
643 maturity, redemption, or other disposition of securities.  
644 However:

645 1. Rental income is included in the term if a significant  
646 portion of the taxpayer's business consists of leasing or  
647 renting real or tangible personal property; and

648 2. Royalty income is included in the term if a significant  
649 portion of the taxpayer's business consists of dealing in or



346858

650 with the production, exploration, or development of minerals.  
651 Income from the sale, assignment, or licensing of intangible  
652 property is also included in the term.

653 (b)1. Sales of tangible personal property occur in this  
654 state if the property is delivered or shipped to a purchaser  
655 within this state, regardless of the f.o.b. point, other  
656 conditions of the sale, or ultimate destination of the property,  
657 unless shipment is made via a common or contract carrier.  
658 However, for industries in SIC Industry Number 2037, if the  
659 ultimate destination of the product is to a location outside  
660 this state, regardless of the method of shipment or f.o.b.  
661 point, the sale shall not be deemed to occur in this state.

662 2. When citrus fruit is delivered by a cooperative for a  
663 grower-member, by a grower-member to a cooperative, or by a  
664 grower-participant to a Florida processor, the sales factor for  
665 the growers for such citrus fruit delivered to such processor  
666 shall be the same as the sales factor for the most recent  
667 taxable year of that processor. That sales factor, expressed  
668 only as a percentage and not in terms of the dollar volume of  
669 sales, so as to protect the confidentiality of the sales of the  
670 processor, shall be furnished on the request of such a grower  
671 promptly after it has been determined for that taxable year.

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

675 (c) Sales of services are in this state if the buyers  
676 receive the benefit of the services in this state. A buyer  
677 receives the benefit of services in this state if any one of the  
678 following applies:





346858

679       1. The service relates to real property located in this  
680 state;

681       2. The service relates to tangible personal property  
682 located in this state at the time the service is received;

683       3. The service relates to tangible personal property  
684 delivered directly or indirectly to customers in this state;

685       4. The service is provided to an individual physically  
686 present in this state at the time the service is received; or

687       5. The services is provided to a buyer engaged in a trade  
688 or business in this state and relates to that trade or business.

689       (d) If the purchaser of a service receives the benefit of a  
690 service in more than one state, the gross receipts from the  
691 performance of the service are included in the numerator of the  
692 sales factor according to the portion of the service received in  
693 this state.

694       (e) If the taxpayer is not subject to income tax in the  
695 state in which the benefit of the service is received, the  
696 benefit of the service is received in this state to the extent  
697 that the taxpayer's employees or representatives performed  
698 services from a location in this state. Fifty percent of the  
699 taxpayer's receipts that are considered received in this state  
700 under this paragraph shall be included in the numerator of the  
701 sales factor.

702       (f) Sales that are not attributable or assignable to any  
703 taxing jurisdiction and sales that are attributable or  
704 assignable to jurisdictions where the taxpayer is not subject to  
705 an income tax, or where the jurisdiction does not impose an  
706 income tax, are eliminated from both the numerator and  
707 denominator of the sales factor.



346858

708           ~~(c) Sales of a financial organization, including, but not~~  
709 ~~limited to, banking and savings institutions, investment~~  
710 ~~companies, real estate investment trusts, and brokerage~~  
711 ~~companies, occur in this state if derived from:~~

712           ~~1. Fees, commissions, or other compensation for financial~~  
713 ~~services rendered within this state;~~

714           ~~2. Gross profits from trading in stocks, bonds, or other~~  
715 ~~securities managed within this state;~~

716           ~~3. Interest received within this state, other than interest~~  
717 ~~from loans secured by mortgages, deeds of trust, or other liens~~  
718 ~~upon real or tangible personal property located without this~~  
719 ~~state, and dividends received within this state;~~

720           ~~4. Interest charged to customers at places of business~~  
721 ~~maintained within this state for carrying debit balances of~~  
722 ~~margin accounts, without deduction of any costs incurred in~~  
723 ~~carrying such accounts;~~

724           ~~5. Interest, fees, commissions, or other charges or gains~~  
725 ~~from loans secured by mortgages, deeds of trust, or other liens~~  
726 ~~upon real or tangible personal property located in this state or~~  
727 ~~from installment sale agreements originally executed by a~~  
728 ~~taxpayer or the taxpayer's agent to sell real or tangible~~  
729 ~~personal property located in this state;~~

730           ~~6. Rents from real or tangible personal property located in~~  
731 ~~this state; or~~

732           ~~7. Any other gross income, including other interest,~~  
733 ~~resulting from the operation as a financial organization within~~  
734 ~~this state.~~

735  
736 ~~In computing the amounts under this paragraph, any amount~~



346858

737 ~~received by a member of an affiliated group (determined under s.~~  
738 ~~1504(a) of the Internal Revenue Code, but without reference to~~  
739 ~~whether any such corporation is an "includable corporation"~~  
740 ~~under s. 1504(b) of the Internal Revenue Code) from another~~  
741 ~~member of such group shall be included only to the extent such~~  
742 ~~amount exceeds expenses of the recipient directly related~~  
743 ~~thereto.~~

744 ~~(6) The term "financial organization," as used in this~~  
745 ~~section, includes any bank, trust company, savings bank,~~  
746 ~~industrial bank, land bank, safe-deposit company, private~~  
747 ~~banker, savings and loan association, credit union, cooperative~~  
748 ~~bank, small loan company, sales finance company, or investment~~  
749 ~~company.~~

750 ~~(5)-(7)~~ The term "everywhere," as used in the computation of  
751 apportionment factor denominators under this section, means "in  
752 all states of the United States, the District of Columbia, the  
753 Commonwealth of Puerto Rico, any territory or possession of the  
754 United States, and any foreign country, or any political  
755 subdivision of the foregoing."

756 ~~(6)-(8)~~ No research and development activities certified as  
757 being conducted within this state in conjunction with and  
758 through a university that is a member of the State University  
759 System or a nonpublic university that is chartered in Florida  
760 and conducts graduate programs at the professional or doctoral  
761 level shall cause any corporation to become subject to the taxes  
762 imposed by this chapter if the corporation would otherwise not  
763 be subject to the tax levied under this chapter. The property  
764 and payroll eliminated from the apportionment formula pursuant  
765 to the provisions of paragraphs (2) (c) and (3) (c) ~~(4) (e)~~ shall



346858

766 be eliminated only for the duration of the contractual period  
767 specified in the contracts for the conduct of the sponsored  
768 research. The reduction in tax due as a result of the property  
769 and payroll eliminated from the apportionment formula pursuant  
770 to the provisions of paragraphs (2) (c) and (3) (c) ~~(4) (e)~~ shall  
771 not exceed the amount paid to the university for the conduct of  
772 the sponsored research. No sponsored research contracts in  
773 existence prior to July 1, 1998, shall be eligible to  
774 participate in the provisions of paragraphs (2) (c) and (3) (c)  
775 ~~(4) (e)~~.

776 Section 10. Section 220.1501, Florida Statutes, is amended  
777 to read:

778 220.1501 Rulemaking authority to implement s. 220.15(2) (c),  
779 (3) (c) ~~(4) (e)~~, and (8).—The Department of Revenue has authority  
780 to adopt rules pursuant to the Administrative Procedure Act to  
781 implement s. 220.15(2) (c), (3) (c) ~~(4) (e)~~, and (8), as created by  
782 chapter 98-325, Laws of Florida.

783 Section 11. Section 220.1505, Florida Statutes, is created  
784 to read:

785 220.1505 Apportionment; financial institutions.—

786 (1) APPORTIONMENT AND ALLOCATION.—

787 (a) Except as otherwise specifically provided by law, a  
788 financial institution whose business activity is taxable both  
789 within and without this state shall allocate and apportion its  
790 adjusted federal income as provided in this section. A financial  
791 institution organized under the laws of a foreign country, the  
792 Commonwealth of Puerto Rico, or a territory or possession of the  
793 United States whose effectively connected income, as defined  
794 under the Internal Revenue Code, is taxable both within this



346858

795 state and within another state, other than the state in which it  
796 is organized, shall apportion its adjusted federal income as  
797 provided in this section.

798 (b) Adjusted federal income shall be apportioned to this  
799 state by multiplying it by an apportionment fraction composed of  
800 a receipts factor representing 50 percent of the fraction, a  
801 property factor representing 25 percent of the fraction, and a  
802 payroll factor representing 25 percent of the fraction. If any  
803 factor described in subsection (3), subsection (4), or  
804 subsection (5) has a denominator that is zero or is determined  
805 by the department to be insignificant, the relative weights of  
806 the other factors in the denominator of the apportionment  
807 fraction shall be as follows:

808 1. If the denominators for any two factors are zero or are  
809 insignificant, the weighted percentage for the remaining factor  
810 shall be 100 percent.

811 2. If the denominator for the receipts factor is zero or  
812 insignificant, the weighted percentage for the property and  
813 payroll factors shall change from 25 percent to 50 percent,  
814 respectively.

815 3. If the denominator for either the property or payroll  
816 factor is zero or insignificant, the weighted percentage for the  
817 other shall be 33 1/3 percent and the weighted percentage for  
818 the receipts factor shall be 66 2/3 percent.

819 (c) Each factor shall be computed according to the method  
820 of accounting used by the taxpayer for the taxable year.

821 (2) DEFINITIONS.—As used in this section, the term:

822 (a) "Billing address" means the location indicated in the  
823 books and records of the taxpayer on the first day of the



346858

824 taxable year, or on such later date in the taxable year when the  
825 customer relationship began, as the address where any notice,  
826 statement, or bill relating to a customer's account is mailed.

827 (b) "Borrower or credit card holder located in this state"  
828 means:

829 1. A borrower, other than a credit card holder, which is  
830 engaged in a trade or business and which maintains its  
831 commercial domicile in this state; or

832 2. A borrower that is not engaged in a trade or business or  
833 a credit card holder whose billing address is in this state.

834 (c) "Commercial domicile" means:

835 1. The headquarters of the trade or business which is the  
836 place from which the trade or business is principally managed  
837 and directed; or

838 2. If a taxpayer is organized under the laws of a foreign  
839 country, the Commonwealth of Puerto Rico, or any territory or  
840 possession of the United States, such taxpayer's commercial  
841 domicile shall be deemed for the purposes of this section to be  
842 the state of the United States or the District of Columbia from  
843 which such taxpayer's trade or business in the United States is  
844 principally managed and directed. It shall be presumed, subject  
845 to rebuttal, that the location from which the taxpayer's trade  
846 or business is principally managed and directed is the state of  
847 the United States or the District of Columbia to which the  
848 greatest number of employees are regularly connected or out of  
849 which they are working, irrespective of where the services of  
850 such employees are performed, as of the last day of the taxable  
851 year.

852 (d) "Compensation" means wages, salaries, commissions, and



346858

853 any other form of remuneration paid to employees for personal  
854 services that are included in such employee's gross income under  
855 the Internal Revenue Code. In the case of employees not subject  
856 to the Internal Revenue Code, such as those employed in foreign  
857 countries, the determination of whether such payments would  
858 constitute gross income to such employees under the Internal  
859 Revenue Code shall be made as though such employees were subject  
860 to the Internal Revenue Code.

861 (e) "Credit card" means credit, travel, or entertainment  
862 card.

863 (f) "Credit card issuer's reimbursement fee" means the fee  
864 a taxpayer receives from a merchant's bank because one of the  
865 persons to whom the taxpayer has issued a credit card has  
866 charged merchandise or services to the credit card.

867 (g) "Employee" means, with respect to a particular  
868 taxpayer, any individual who, under the usual common law rules  
869 applicable in determining the employer-employee relationship,  
870 has the status of an employee of that taxpayer.

871 (h) "Financial institution" means:

872 1. Any corporation or other business entity registered  
873 under state law as a bank holding company or registered under  
874 the Federal Bank Holding Company Act of 1956, as amended, or  
875 registered as a savings and loan holding company under the  
876 Federal National Housing Act, as amended.

877 2. A national bank organized and existing as a national  
878 bank association pursuant to the provisions of the National Bank  
879 Act, 12 U.S.C. ss. 21 et seq.

880 3. A savings association or federal savings bank as defined  
881 in the Federal Deposit Insurance Act, 12 U.S.C. s. 1813(b)(1).



346858

882           4. Any bank or thrift institution incorporated or organized  
883 under the laws of any state.

884           5. Any corporation organized under the provisions of 12  
885 U.S.C. ss. 611-631.

886           6. Any agency or branch of a foreign depository as defined  
887 in 12 U.S.C. s. 3101.

888           7. A state credit union the loan assets of which exceed \$50  
889 million as of the first day of its taxable year.

890           8. A production credit association organized under the  
891 Federal Farm Credit Act of 1933, all of whose stock held by the  
892 Federal Production Credit Corporation has been retired.

893           9. Any investment company.

894           10. Any corporation whose voting stock is more than 50  
895 percent owned, directly or indirectly, by any person or business  
896 entity described in subparagraphs 1.-9.

897           11. A corporation or other business entity that derives  
898 more than 50 percent of its total gross income for financial  
899 accounting purposes from finance leases. For purposes of this  
900 subsection, a "finance lease" means any lease transaction that  
901 is the functional equivalent of an extension of credit and that  
902 transfers substantially all of the benefits and risks incident  
903 to the ownership of property. The phrase includes any "direct  
904 financing lease" or "leverage lease" that meets the criteria of  
905 Financial Accounting Standards Board Statement No. 13,  
906 "Accounting for Leases" or any other lease that is accounted for  
907 as a financing lease by a lessor under generally accepted  
908 accounting principles. For this classification to apply:

909           a. The average of the gross income in the current tax year  
910 and immediately preceding 2 tax years must satisfy the more than





346858

911 50 percent requirement; and

912 b. Gross income from incidental or occasional transactions  
913 shall be disregarded; or

914 12. Any other person or business entity that derives more  
915 than 50 percent of its gross income from activities that a  
916 person described in subparagraphs 2.-9. and 11. is authorized to  
917 transact. For the purpose of this subparagraph, the computation  
918 of gross income shall not include income from nonrecurring,  
919 extraordinary items. The department may exclude any person from  
920 the application of this subparagraph upon such person proving,  
921 by clear and convincing evidence, that the income-producing  
922 activity of such person is not in substantial competition with  
923 those persons described in subparagraphs 2.-9. and 11.

924 (i) "Gross rents" means the actual sum of money or other  
925 consideration payable for the use or possession of property.  
926 "Gross rents" includes, but is not limited to:

927 1. Any amount payable for the use or possession of real  
928 property or tangible property whether designated as a fixed sum  
929 of money or as a percentage of receipts, profits, or otherwise;

930 2. Any amount payable as additional rent or in lieu of  
931 rent, such as interest, taxes, insurance, repairs, or any other  
932 amount required to be paid by the terms of a lease or other  
933 arrangement; and

934 3. A proportionate part of the cost of any improvement to  
935 real property made by or on behalf of the taxpayer which reverts  
936 to the owner or lessor upon termination of a lease or other  
937 arrangement. The amount to be included in gross rents is the  
938 amount of amortization or depreciation allowed in computing the  
939 taxable income base for the taxable year. However, if a building



346858

940 is erected on leased land by or on behalf of the taxpayer, the  
941 value of the land is determined by multiplying the gross rent by  
942 eight and the value of the building is determined in the same  
943 manner as if owned by the taxpayer.

944 4. The following are not included in the term "gross  
945 rents":

946 a. Reasonable amounts payable as separate charges for water  
947 and electric service furnished by the lessor;

948 b. Reasonable amounts payable as service charges for  
949 janitorial services furnished by the lessor;

950 c. Reasonable amounts payable for storage, if such amounts  
951 are payable for space not designated and not under the control  
952 of the taxpayer; and

953 d. That portion of any rental payment which is applicable  
954 to the space subleased from the taxpayer and not used by it.

955 (j) "Loan" means any extension of credit resulting from  
956 direct negotiations between the taxpayer and its customer, or  
957 the purchase, in whole or in part, of such extension of credit  
958 from another. Loans include participations, syndications, and  
959 leases treated as loans for federal income tax purposes. Loans  
960 shall not include: properties treated as loans under s. 595 of  
961 the Internal Revenue Code; futures or forward contracts;  
962 options; notional principal contracts such as swaps; credit card  
963 receivables, including purchased credit card relationships;  
964 noninterest bearing balances due from depository institutions;  
965 cash items in the process of collection; federal funds sold;  
966 securities purchased under agreements to resell; assets held in  
967 a trading account; securities; interests in a REMIC, or other  
968 mortgage-backed or asset-backed security; and other similar



346858

969 items.

970 (k) "Loan secured by real property" means that 50 percent  
971 or more of the aggregate value of the collateral used to secure  
972 a loan or other obligation, when valued at fair market value as  
973 of the time the original loan or obligation was incurred, was  
974 real property.

975 (l) "Merchant discount" means the fee, or negotiated  
976 discount, charged to a merchant by the taxpayer for the  
977 privilege of participating in a program whereby a credit card is  
978 accepted in payment for merchandise or services sold to the card  
979 holder.

980 (m) "Participation" means an extension of credit in which  
981 an undivided ownership interest is held on a pro rata basis in a  
982 single loan or pool of loans and related collateral. In a loan  
983 participation, the credit originator initially makes the loan  
984 and then subsequently resells all or a portion of it to other  
985 lenders. The participation may or may not be known to the  
986 borrower.

987 (n) "Person" means an individual, estate, trust,  
988 partnership, corporation, and any other business entity.

989 (o) "Principal base of operations" with respect to  
990 transportation property means the place of more or less  
991 permanent nature from which the property is regularly directed  
992 or controlled. With respect to an employee, the "principal base  
993 of operations" means the place of more or less permanent nature  
994 from which the employee regularly:

995 1. Starts his or her work and to which he or she  
996 customarily returns in order to receive instructions from his or  
997 her employer;



346858

998 2. Communicates with his or her customers or other persons;

999 or

1000 3. Performs any other functions necessary to the exercise  
1001 of his or her trade or profession at some other point or points.

1002 (p) "Real property owned" and "tangible personal property  
1003 owned" mean real and tangible personal property, respectively:

1004 1. On which the taxpayer may claim depreciation for federal  
1005 income tax purposes; or

1006 2. To which the taxpayer holds legal title and on which no  
1007 other person may claim depreciation for federal income tax  
1008 purposes, or could claim depreciation if subject to federal  
1009 income tax. Real and tangible personal property do not include  
1010 coin, currency, or property acquired in lieu of or pursuant to a  
1011 foreclosure.

1012 (q) "Regular place of business" means an office at which  
1013 the taxpayer carries on its business in a regular and systematic  
1014 manner and which is continuously maintained, occupied, and used  
1015 by employees of the taxpayer.

1016 (r) "State" means a state of the United States, the  
1017 District of Columbia, the Commonwealth of Puerto Rico, any  
1018 territory or possession of the United States, or any foreign  
1019 country.

1020 (s) "Syndication" means an extension of credit in which two  
1021 or more persons fund and each person is at risk only up to a  
1022 specified percentage of the total extension of credit or up to a  
1023 specified dollar amount.

1024 (t) "Taxable" means:

1025 1. That a taxpayer is subject in another state to a net  
1026 income tax, a franchise tax measured by net income, a franchise



346858

1027 tax for the privilege of doing business, a corporate stock tax  
1028 including a bank shares tax, a single business tax, an earned  
1029 surplus tax, or any tax that is imposed upon or measured by net  
1030 income; or

1031 2. That another state has jurisdiction to subject the  
1032 taxpayer to any of such taxes regardless of whether, in fact,  
1033 the state does or does not.

1034 (u) "Transportation property" means vehicles and vessels  
1035 capable of moving under their own power, such as aircraft,  
1036 trains, water vessels, and motor vehicles, as well as any  
1037 equipment or containers attached to such property, such as  
1038 rolling stock, barges, trailers, or the like.

1039 (3) RECEIPTS FACTOR.—

1040 (a) General.—The receipts factor is a fraction, the  
1041 numerator of which is the receipts of the taxpayer in this state  
1042 during the taxable year and the denominator of which is the  
1043 receipts of the taxpayer within and without this state during  
1044 the taxable year. The method of calculating receipts for  
1045 purposes of the denominator is the same as the method used in  
1046 determining receipts for purposes of the numerator. The receipts  
1047 factor shall include only those receipts described in this  
1048 subsection which constitute and are included in the computation  
1049 of adjusted federal income for the taxable year.

1050 (b) Receipts from the lease of real property.—The numerator  
1051 of the receipts factor includes receipts from the lease or  
1052 rental of real property owned by the taxpayer if the property is  
1053 located within this state or receipts from the sublease of real  
1054 property if the property is located within this state.

1055 (c) Receipts from the lease of tangible personal property.—



346858

1056           1. Except as described in subparagraph 2., the numerator of  
1057 the receipts factor includes receipts from the lease or rental  
1058 of tangible personal property owned by the taxpayer if the  
1059 property is located within this state when it is first placed in  
1060 service by the lessee.

1061           2. Receipts from the lease or rental of transportation  
1062 property owned by the taxpayer are included in the numerator of  
1063 the receipts factor to the extent that the property is used in  
1064 this state. The extent an aircraft is deemed to be used in this  
1065 state and the amount of receipts that are included in the  
1066 numerator of this state's receipts factor is determined by  
1067 multiplying all the receipts from the lease or rental of the  
1068 aircraft by a fraction, the numerator of which is the number of  
1069 landings of the aircraft in this state and the denominator of  
1070 which is the total number of landings of the aircraft. If the  
1071 extent of the use of any transportation property within this  
1072 state cannot be determined, the property shall be deemed to be  
1073 used wholly in the state in which the property has its principal  
1074 base of operations. A motor vehicle shall be deemed to be used  
1075 wholly in the state in which it is registered.

1076           (d) Interest from loans secured by real property.—

1077           1. The numerator of the receipts factor includes interest  
1078 and fees or penalties in the nature of interest from loans  
1079 secured by real property if the property is located within this  
1080 state. If the property is located both within this state and one  
1081 or more other states, the receipts described in this subsection  
1082 are included in the numerator of the receipts factor if more  
1083 than 50 percent of the fair market value of the real property is  
1084 located within this state. If more than 50 percent of the fair



346858

1085 market value of the real property is not located within any one  
1086 state, the receipts described in this subsection shall be  
1087 included in the numerator of the receipts factor if the borrower  
1088 is located in this state.

1089 2. The determination of whether the real property securing  
1090 a loan is located within this state shall be made as of the time  
1091 the original agreement was made and any and all subsequent  
1092 substitutions of collateral shall be disregarded.

1093 (e) Interest from loans not secured by real property.—The  
1094 numerator of the receipts factor includes interest and fees or  
1095 penalties in the nature of interest from loans not secured by  
1096 real property if the borrower is located in this state.

1097 (f) Net gains from the sale of loans.—The numerator of the  
1098 receipts factor includes net gains from the sale of loans. Net  
1099 gains from the sale of loans includes income recorded under the  
1100 coupon stripping rules of s. 1286 of the Internal Revenue Code.

1101 1. The amount of net gains, but not less than zero, from  
1102 the sale of loans secured by real property included in the  
1103 numerator is determined by multiplying such net gains by a  
1104 fraction the numerator of which is the amount included in the  
1105 numerator of the receipts factor pursuant to paragraph (d) and  
1106 the denominator of which is the total amount of interest and  
1107 fees or penalties in the nature of interest from loans secured  
1108 by real property.

1109 2. The amount of net gains, but not less than zero, from  
1110 the sale of loans not secured by real property included in the  
1111 numerator is determined by multiplying such net gains by a  
1112 fraction the numerator of which is the amount included in the  
1113 numerator of the receipts factor pursuant to paragraph (e) and



346858

1114 the denominator of which is the total amount of interest and  
1115 fees or penalties in the nature of interest from loans not  
1116 secured by real property.

1117 (g) Receipts from credit card receivables.—The numerator of  
1118 the receipts factor includes interest and fees or penalties in  
1119 the nature of interest from credit card receivables and receipts  
1120 from fees charged to card holders, such as annual fees, if the  
1121 billing address of the card holder is in this state.

1122 (h) Net gains from the sale of credit card receivables.—The  
1123 numerator of the receipts factor includes net gains, but not  
1124 less than zero, from the sale of credit card receivables  
1125 multiplied by a fraction, the numerator of which is the amount  
1126 included in the numerator of the receipts factor pursuant to  
1127 paragraph (g) and the denominator of which is the taxpayer's  
1128 total amount of interest and fees or penalties in the nature of  
1129 interest from credit card receivables and fees charged to card  
1130 holders.

1131 (i) Credit card issuer's reimbursement fees.—The numerator  
1132 of the receipts factor includes all credit card issuer's  
1133 reimbursement fees multiplied by a fraction, the numerator of  
1134 which is the amount included in the numerator of the receipts  
1135 factor pursuant to paragraph (g) and the denominator of which is  
1136 the taxpayer's total amount of interest and fees or penalties in  
1137 the nature of interest from credit card receivables and fees  
1138 charged to card holders.

1139 (j) Receipts from merchant discount.—The numerator of the  
1140 receipts factor includes receipts from merchant discount if the  
1141 commercial domicile of the merchant is in this state. Such  
1142 receipts shall be computed net of any cardholder charge backs,





346858

1143 but shall not be reduced by any interchange transaction fees or  
1144 by any issuer's reimbursement fees paid to another for charges  
1145 made by its card holders.

1146 (k) Loan servicing fees.—

1147 1.a. The numerator of the receipts factor includes loan  
1148 servicing fees derived from loans secured by real property  
1149 multiplied by a fraction the numerator of which is the amount  
1150 included in the numerator of the receipts factor pursuant to  
1151 paragraph (d) and the denominator of which is the total amount  
1152 of interest and fees or penalties in the nature of interest from  
1153 loans secured by real property.

1154 b. The numerator of the receipts factor includes loan  
1155 servicing fees derived from loans not secured by real property  
1156 multiplied by a fraction the numerator of which is the amount  
1157 included in the numerator of the receipts factor pursuant to  
1158 paragraph (e) and the denominator of which is the total amount  
1159 of interest and fees or penalties in the nature of interest from  
1160 loans not secured by real property.

1161 2. In circumstances in which the taxpayer receives loan  
1162 servicing fees for servicing the secured or the unsecured loans  
1163 of another, the numerator of the receipts factor shall include  
1164 such fees if the borrower is located in this state.

1165 (l) Receipts from services.—The numerator of the receipts  
1166 factor includes receipts from services not otherwise apportioned  
1167 under this subsection if the service is performed in this state.  
1168 If the service is performed both within and without this state,  
1169 the numerator of the receipts factor includes receipts from  
1170 services not otherwise apportioned under this section, if a  
1171 greater proportion of the income-producing activity is performed



346858

1172 in this state based on cost of performance.

1173 (m) Receipts from investment assets and activities and  
1174 trading assets and activities.—

1175 1. Interest, dividends, net gains, but not less than zero,  
1176 and other income from investment assets and activities and from  
1177 trading assets and activities shall be included in the receipts  
1178 factor. Investment assets and activities and trading assets and  
1179 activities include, but are not limited to: investment  
1180 securities; trading account assets; federal funds; securities  
1181 purchased and sold under agreements to resell or repurchase;  
1182 options; futures contracts; forward contracts; notional  
1183 principal contracts such as swaps; equities; and foreign  
1184 currency transactions. With respect to the investment and  
1185 trading assets and activities described in sub-subparagraphs a.  
1186 and b., the receipts factor shall include the amounts described  
1187 in such sub-subparagraphs.

1188 a. The receipts factor shall include the amount by which  
1189 interest from federal funds sold and securities purchased under  
1190 resale agreements exceeds interest expense on federal funds  
1191 purchased and securities sold under repurchase agreements.

1192 b. The receipts factor shall include the amount by which  
1193 interest, dividends, gains, and other income from trading assets  
1194 and activities, including, but not limited to, assets and  
1195 activities in the matched book, in the arbitrage book, and  
1196 foreign currency transactions, exceed amounts paid in lieu of  
1197 interest, amounts paid in lieu of dividends, and losses from  
1198 such assets and activities.

1199 2. The numerator of the receipts factor includes interest,  
1200 dividends, net gains, but not less than zero, and other income



346858

1201 from investment assets and activities and from trading assets  
1202 and activities described in subparagraph 1. which are  
1203 attributable to this state.

1204 a. The amount of interest, dividends, net gains, but not  
1205 less than zero, and other income from investment assets and  
1206 activities in the investment account to be attributed to this  
1207 state and included in the numerator is determined by multiplying  
1208 all such income from such assets and activities by a fraction,  
1209 the numerator of which is the average value of such assets that  
1210 are properly assigned to a regular place of business of the  
1211 taxpayer within this state and the denominator of which is the  
1212 average value of all such assets.

1213 b. The amount of interest from federal funds sold and  
1214 purchased and from securities purchased under resale agreements  
1215 and securities sold under repurchase agreements attributable to  
1216 this state and included in the numerator is determined by  
1217 multiplying the amount described in sub-subparagraph 1.a. from  
1218 such funds and such securities by a fraction, the numerator of  
1219 which is the average value of federal funds sold and securities  
1220 purchased under agreements to resell which are properly assigned  
1221 to a regular place of business of the taxpayer within this state  
1222 and the denominator of which is the average value of all such  
1223 funds and such securities.

1224 c. The amount of interest, dividends, gains, and other  
1225 income from trading assets and activities, including, but not  
1226 limited to, assets and activities in the matched book, in the  
1227 arbitrage book, and foreign currency transactions, but excluding  
1228 amounts described in sub-subparagraphs a. or b., attributable to  
1229 this state and included in the numerator is determined by



346858

1230 multiplying the amount described in sub-subparagraph 1.b. by a  
1231 fraction, the numerator of which is the average value of such  
1232 trading assets that are properly assigned to a regular place of  
1233 business of the taxpayer within this state and the denominator  
1234 of which is the average value of all such assets.

1235 d. For purposes of this paragraph, average value shall be  
1236 determined using the rules for determining the average value of  
1237 tangible personal property set forth in paragraphs (4)(c) and  
1238 (d).

1239 3. In lieu of using the method set forth in subparagraph  
1240 2., the taxpayer may elect, or the department may require in  
1241 order to fairly represent the business activity of the taxpayer  
1242 in this state, the use of the method set forth in this  
1243 subparagraph.

1244 a. The amount of interest, dividends, net gains, but not  
1245 less than zero, and other income from investment assets and  
1246 activities in the investment account to be attributed to this  
1247 state and included in the numerator is determined by multiplying  
1248 all such income from such assets and activities by a fraction,  
1249 the numerator of which is the gross income from such assets and  
1250 activities that are properly assigned to a regular place of  
1251 business of the taxpayer within this state and the denominator  
1252 of which is the gross income from all such assets and  
1253 activities.

1254 b. The amount of interest from federal funds sold and  
1255 purchased and from securities purchased under resale agreements  
1256 and securities sold under repurchase agreements attributable to  
1257 this state and included in the numerator is determined by  
1258 multiplying the amount described in sub-subparagraph 1.a. from



346858

1259 such funds and such securities by a fraction, the numerator of  
1260 which is the gross income from such funds and such securities  
1261 that are properly assigned to a regular place of business of the  
1262 taxpayer within this state and the denominator of which is the  
1263 gross income from all such funds and such securities.

1264 c. The amount of interest, dividends, gains, and other  
1265 income from trading assets and activities, including, but not  
1266 limited to, assets and activities in the matched book, in the  
1267 arbitrage book, and foreign currency transactions, but excluding  
1268 amounts described in sub-subparagraph a. or sub-subparagraph b.,  
1269 attributable to this state and included in the numerator is  
1270 determined by multiplying the amount described in sub-  
1271 subparagraph 1.b. by a fraction, the numerator of which is the  
1272 gross income from such trading assets and activities that are  
1273 properly assigned to a regular place of business of the taxpayer  
1274 within this state and the denominator of which is the gross  
1275 income from all such assets and activities.

1276 4. If the taxpayer elects or is required by the department  
1277 to use the method set forth in subparagraph 3., it shall use  
1278 this method on all subsequent returns unless the taxpayer  
1279 receives prior permission from the department to use, or the  
1280 department requires, a different method.

1281 5. The taxpayer has the burden of proving that an  
1282 investment asset or activity or trading asset or activity was  
1283 properly assigned to a regular place of business outside this  
1284 state by demonstrating that the day-to-day decisions regarding  
1285 the asset or activity occurred at a regular place of business  
1286 outside this state. If the day-to-day decisions regarding an  
1287 investment asset or activity or trading asset or activity occur



346858

1288 at more than one regular place of business and one such regular  
1289 place of business is in this state and one such regular place of  
1290 business is outside this state, such asset or activity shall be  
1291 considered to be located at the regular place of business of the  
1292 taxpayer where the investment or trading policies or guidelines  
1293 with respect to the asset or activity are established. Unless  
1294 the taxpayer demonstrates to the contrary, such policies and  
1295 guidelines shall be presumed to be established at the commercial  
1296 domicile of the taxpayer.

1297 (n) Attribution of certain receipts to commercial  
1298 domicile.—All receipts that would be assigned under this section  
1299 to a state in which the taxpayer is not taxable shall be  
1300 included in the numerator of the receipts factor, if the  
1301 taxpayer's commercial domicile is in this state.

1302 (4) PROPERTY FACTOR.—

1303 (a) General.—The property factor is a fraction, the  
1304 numerator of which is the average value of real property and  
1305 tangible personal property rented to the taxpayer which is  
1306 located or used within this state during the taxable year, the  
1307 average value of the taxpayer's real and tangible personal  
1308 property that is owned and located or used within this state  
1309 during the taxable year, and the average value of the taxpayer's  
1310 loans and credit card receivables that are located within this  
1311 state during the taxable year, and the denominator of which is  
1312 the average value of all such property that is located or used  
1313 within and without this state during the taxable year.

1314 (b) Property included.—The property factor shall include  
1315 only property the income or expenses of which are included, or  
1316 would have been included if not fully depreciated or expensed,



346858

1317 or depreciated or expensed to a nominal amount, in the  
1318 computation of the adjusted federal income for the taxable year.

1319 (c) Value of property owned by the taxpayer.—

1320 1. The value of real property and tangible personal  
1321 property owned by the taxpayer is the original cost or other  
1322 basis of such property for federal income tax purposes without  
1323 regard to depletion, depreciation, or amortization.

1324 2. Loans are valued at their outstanding principal balance,  
1325 without regard to any reserve for bad debts. If a loan is  
1326 charged off in whole or in part for federal income tax purposes,  
1327 the portion of the loan charged off is not outstanding. A  
1328 specifically allocated reserve established pursuant to  
1329 regulatory or financial accounting guidelines which is treated  
1330 as charged off for federal income tax purposes shall be treated  
1331 as charged off for purposes of this section.

1332 3. Credit card receivables are valued at their outstanding  
1333 principal balance, without regard to any reserve for bad debts.  
1334 If a credit card receivable is charged off in whole or in part  
1335 for federal income tax purposes, the portion of the receivable  
1336 charged off is not outstanding.

1337 (d) Average value of property owned by the taxpayer.—The  
1338 average value of property owned by the taxpayer is computed on  
1339 an annual basis by adding the value of the property on the first  
1340 day of the taxable year and the value on the last day of the  
1341 taxable year and dividing the sum by two. If averaging on this  
1342 basis does not properly reflect average value, the department  
1343 may require averaging on a more frequent basis. The taxpayer may  
1344 elect to average on a more frequent basis. When averaging on a  
1345 more frequent basis is required by the department or is elected



346858

1346 by the taxpayer, the same method of valuation must be used  
1347 consistently by the taxpayer with respect to property within and  
1348 without this state and on all subsequent returns unless the  
1349 taxpayer receives prior permission from the department or the  
1350 department requires a different method of determining average  
1351 value.

1352 (e) Average value of real property and tangible personal  
1353 property rented to the taxpayer.-

1354 1. The average value of real property and tangible personal  
1355 property that the taxpayer has rented from another and that is  
1356 not treated as property owned by the taxpayer for federal income  
1357 tax purposes shall be determined annually by multiplying the  
1358 gross rents payable during the taxable year by eight.

1359 2. If the use of the general method described in this  
1360 subsection results in inaccurate valuations of rented property,  
1361 any other method that properly reflects the value may be adopted  
1362 by the department or by the taxpayer when approved in writing by  
1363 the department. Once approved, such other method of valuation  
1364 must be used on all subsequent returns unless the taxpayer  
1365 receives prior approval from the department or the department  
1366 requires a different method of valuation.

1367 (f) Location of real property and tangible personal  
1368 property owned by or rented to the taxpayer.-

1369 1. Except as described in subparagraph 2., real property  
1370 and tangible personal property owned by or rented to the  
1371 taxpayer is considered to be located within this state if it is  
1372 physically located, situated, or used within this state.

1373 2. Transportation property is included in the numerator of  
1374 the property factor to the extent that the property is used in





346858

1375 this state. The extent an aircraft is deemed to be used in this  
1376 state and the amount of value that is included in the numerator  
1377 of this state's property factor is determined by multiplying the  
1378 average value of the aircraft by a fraction, the numerator of  
1379 which is the number of landings of the aircraft in this state  
1380 and the denominator of which is the total number of landings of  
1381 the aircraft everywhere. If the extent of the use of any  
1382 transportation property within this state cannot be determined,  
1383 the property shall be deemed to be used wholly in the state in  
1384 which the property has its principal base of operations. A motor  
1385 vehicle shall be deemed to be used wholly in the state in which  
1386 it is registered.

1387 (g) Location of loans.-

1388 1.a. A loan is considered to be located within this state  
1389 if it is properly assigned to a regular place of business of the  
1390 taxpayer within this state.

1391 b. A loan is properly assigned to the regular place of  
1392 business with which it has a preponderance of substantive  
1393 contacts. A loan assigned by the taxpayer to a regular place of  
1394 business without the state shall be presumed to have been  
1395 properly assigned if:

1396 (I) The taxpayer has assigned, in the regular course of its  
1397 business, such loan on its records to a regular place of  
1398 business consistent with federal or state regulatory  
1399 requirements;

1400 (II) Such assignment on its records is based upon  
1401 substantive contacts of the loan to such regular place of  
1402 business; and

1403 (III) The taxpayer uses said records reflecting assignment



346858

1404 of loans for the filing of all state and local tax returns for  
1405 which an assignment of loans to a regular place of business is  
1406 required.

1407 c. The presumption of proper assignment of a loan provided  
1408 in sub-subparagraph b. may be rebutted upon a showing by the  
1409 department, supported by a preponderance of the evidence, that  
1410 the preponderance of substantive contacts regarding such loan  
1411 did not occur at the regular place of business to which it was  
1412 assigned on the taxpayer's records. When such presumption has  
1413 been rebutted, the loan shall be located within this state if:

1414 (I) The taxpayer had a regular place of business within  
1415 this state at the time the loan was made; and

1416 (II) The taxpayer fails to show, by a preponderance of the  
1417 evidence, that the preponderance of substantive contacts  
1418 regarding such loan did not occur within this state.

1419 2. In the case of a loan that is assigned by the taxpayer  
1420 to a place without this state which is not a regular place of  
1421 business, it shall be presumed, subject to rebuttal by the  
1422 taxpayer on a showing supported by the preponderance of  
1423 evidence, that the preponderance of substantive contacts  
1424 regarding the loan occurred within this state if, at the time  
1425 the loan was made the taxpayer's commercial domicile, as defined  
1426 by paragraph (2) (c), was within this state.

1427 3. To determine the state in which the preponderance of  
1428 substantive contacts relating to a loan have occurred, the facts  
1429 and circumstances regarding the loan at issue shall be reviewed  
1430 on a case-by-case basis and consideration shall be given to such  
1431 activities as the solicitation, investigation, negotiation,  
1432 approval, and administration of the loan. The terms



346858

1433 "solicitation," "investigation," "negotiation," "approval," and  
1434 "administration" are defined as follows:

1435 a. Solicitation is either active or passive. Active  
1436 solicitation occurs when an employee of the taxpayer initiates  
1437 the contact with the customer. Such activity is located at the  
1438 regular place of business that the taxpayer's employee is  
1439 regularly connected with or working out of, regardless of where  
1440 the services of such employee were actually performed. Passive  
1441 solicitation occurs when the customer initiates the contact with  
1442 the taxpayer. If the customer's initial contact was not at a  
1443 regular place of business of the taxpayer, the regular place of  
1444 business, if any, where the passive solicitation occurred is  
1445 determined by the facts in each case.

1446 b. Investigation is the procedure whereby employees of the  
1447 taxpayer determine the credit worthiness of the customer, as  
1448 well as the degree of risk involved in making a particular  
1449 agreement. Such activity is located at the regular place of  
1450 business that the taxpayer's employees are regularly connected  
1451 with or working out of, regardless of where the services of such  
1452 employees were actually performed.

1453 c. Negotiation is the procedure whereby employees of the  
1454 taxpayer and its customer determine the terms of the agreement,  
1455 such as the amount, duration, interest rate, frequency of  
1456 repayment, currency denomination, and security required. Such  
1457 activity is located at the regular place of business that the  
1458 taxpayer's employees are regularly connected with or working out  
1459 of, regardless of where the services of such employees were  
1460 actually performed.

1461 d. Approval is the procedure whereby employees or the board



346858

1462 of directors of the taxpayer make the final determination  
1463 whether to enter into the agreement. Such activity is located at  
1464 the regular place of business that the taxpayer's employees are  
1465 regularly connected with or working out of, regardless of where  
1466 the services of such employees were actually performed. If the  
1467 board of directors makes the final determination, such activity  
1468 is located at the commercial domicile of the taxpayer.

1469 e. Administration is the process of managing the account.  
1470 This process includes bookkeeping, collecting the payments,  
1471 corresponding with the customer, reporting to management  
1472 regarding the status of the agreement, and proceeding against  
1473 the borrower or the security interest if the borrower is in  
1474 default. Such activity is located at the regular place of  
1475 business that oversees this activity.

1476 (h) Location of credit card receivables.—For purposes of  
1477 determining the location of credit card receivables, credit card  
1478 receivables shall be treated as loans and are subject to the  
1479 provisions of paragraph (g).

1480 (i) Period for which properly assigned loan remains  
1481 assigned.—A loan that has been properly assigned to a state  
1482 shall, absent any change of material fact, remain assigned to  
1483 the state for the length of the original term of the loan.  
1484 Thereafter, the loan may be properly assigned to another state  
1485 if the loan has a preponderance of substantive contact to a  
1486 regular place of business there.

1487 (5) PAYROLL FACTOR.—

1488 (a) General.—The payroll factor is a fraction, the  
1489 numerator of which is the total amount paid in this state during  
1490 the taxable year by the taxpayer for compensation and the



346858

1491 denominator of which is the total compensation paid both within  
1492 and without this state during the taxable year. The payroll  
1493 factor shall include only that compensation included in the  
1494 computation of adjusted federal income for the taxable year.

1495 (b) Compensation relating to nonbusiness income and  
1496 independent contractors.—The compensation of any employee for  
1497 services or activities that are connected with the production of  
1498 nonbusiness income, or income that is not includable in adjusted  
1499 federal income, and payments made to any independent contractor  
1500 or any other person not properly classifiable as an employee  
1501 shall be excluded from both the numerator and denominator of the  
1502 factor.

1503 (c) When compensation is paid in this state.—Compensation  
1504 is paid in this state if any one of the following tests, applied  
1505 consecutively, is met:

1506 1. The employee's services are performed entirely within  
1507 this state.

1508 2. The employee's services are performed both within and  
1509 without the state, but the service performed without the state  
1510 is incidental to the employee's service within the state. The  
1511 term "incidental" means any service that is temporary or  
1512 transitory in nature or that is rendered in connection with an  
1513 isolated transaction.

1514 3. If the employee's services are performed both within and  
1515 without this state, the employee's compensation shall be  
1516 attributed to this state:

1517 a. If the employee's principal base of operations is within  
1518 this state;

1519 b. If there is no principal base of operations in any state



346858

1520 in which some part of the services are performed, but the place  
1521 from which the services are directed or controlled is in this  
1522 state; or

1523 c. If the principal base of operations and the place from  
1524 which the services are directed or controlled are not in any  
1525 state in which some part of the service is performed but the  
1526 employee's residence is in this state.

1527 Section 12. Subsections (2) and (3) of section 220.151,  
1528 Florida Statutes, are amended to read:

1529 220.151 Apportionment; methods for special industries.—

1530 (2) The tax base for a taxpayer furnishing transportation  
1531 services other than by air, for the purpose of computing a tax  
1532 on those activities, shall be apportioned to this state by  
1533 multiplying such base by a fraction the numerator of which is  
1534 the revenue miles of the taxpayer in this state and the  
1535 denominator of which is the revenue miles of the taxpayer  
1536 everywhere. The term "revenue miles in this state" also includes  
1537 all miles traversed between points in this state, even though  
1538 the route of travel is not wholly over the land mass of the  
1539 state.

1540 (a) For transportation other than by pipeline or by air, a  
1541 revenue mile is the transportation of one passenger or 1 net ton  
1542 of freight the distance of 1 mile for a consideration. When a  
1543 taxpayer is engaged in the transportation of both passengers and  
1544 freight, the fraction shall be determined by means of an average  
1545 of the passenger revenue mile fraction and the freight revenue  
1546 mile fraction, weighted to reflect the taxpayer's relative  
1547 railway operating income from total passenger and total freight  
1548 service as reported to the United States Department of



346858

1549 ~~Transportation Interstate Commerce Commission~~, in the case of  
1550 transportation by railroad, or weighted to reflect the  
1551 taxpayer's relative gross receipts from passenger and freight  
1552 transportation, in case of transportation other than by  
1553 railroad.

1554 (b) For transportation by pipeline, a revenue mile is the  
1555 transportation by pipeline of 1 barrel of oil, 1,000 cubic feet  
1556 of gas, or any specified quantity of any other substance the  
1557 distance of 1 mile for a consideration.

1558 (c) The tax base for a taxpayer furnishing transportation  
1559 services by air, for purposes of computing a tax on those  
1560 activities, shall be apportioned to this state by multiplying  
1561 such base by a fraction the numerator of which is the number of  
1562 takeoffs and landings in this state and the denominator is the  
1563 number of takeoffs and landings everywhere. ~~For purposes of~~  
1564 ~~paragraph (a), in computing the revenue miles of any taxpayer~~  
1565 ~~engaged in furnishing air or sea transportation services, the~~  
1566 ~~"revenue miles in this state" shall include all miles traversed~~  
1567 ~~within the area bounded on the west by the meridian of longitude~~  
1568 ~~87°30' west from Greenwich, bounded on the north by the northern~~  
1569 ~~land border of this state or the parallel of latitude 31° north~~  
1570 ~~from the equator, bounded on the east by the meridian of~~  
1571 ~~longitude 80° west from Greenwich, and bounded on the south by~~  
1572 ~~the parallel of latitude 23°30' north from the equator as the~~  
1573 ~~case may be. The "revenue miles in this state" shall also~~  
1574 ~~include all miles traversed between points in this state, even~~  
1575 ~~though the route of travel is not wholly over the land mass of~~  
1576 ~~the state. The department may prescribe standard mileage tables~~  
1577 ~~for the purpose of determining revenue miles in the state under~~



346858

1578 ~~this paragraph, rather than requiring taxpayers to compute from~~  
1579 ~~their records the actual number of miles traversed within such~~  
1580 ~~boundaries or points from time to time.~~

1581 (d) For taxpayers furnishing transportation services by  
1582 sea, revenue miles within this state shall be miles traversed  
1583 within the constitutional boundaries of Florida.

1584 (e) For purposes of this subsection, revenue miles not  
1585 allocable or apportionable to any taxing jurisdiction, otherwise  
1586 known as "nowhere miles," are eliminated from both the numerator  
1587 and denominator of the apportionment computation.

1588 (f) ~~(d)~~ For purposes of this subsection, the term "taxpayer  
1589 furnishing transportation services" includes taxpayers engaged  
1590 exclusively in interstate commerce.

1591 (3) For any taxable year beginning on or after January 1,  
1592 1999, a citrus processing company may, if required to apportion  
1593 its taxable net income pursuant to the three-factor  
1594 apportionment method set forth in s. 220.15(1), elect to have  
1595 such apportionment determined for that taxable year solely by  
1596 use of the sales factor, as set forth in s. 220.15(4) ~~s.~~  
1597 ~~220.15(5)~~. The election shall be made by the filing of a return  
1598 for the taxable year utilizing this method.

1599 Section 13. Section 220.152, Florida Statutes, is amended  
1600 to read:

1601 220.152 Apportionment; other methods.—If the apportionment  
1602 methods of ss. 220.15, 220.1505, and 220.151 do not fairly  
1603 represent the extent of a taxpayer's tax base attributable to  
1604 this state, the taxpayer may petition for, or the department may  
1605 require, in respect to all or any part of the taxpayer's tax  
1606 base, if reasonable:





346858

1607           (1) Separate accounting;  
1608           (2) The exclusion of any one or more factors;  
1609           (3) The inclusion of one or more additional factors which  
1610 will fairly represent the taxpayer's tax base attributable to  
1611 this state; or  
1612           (4) The employment of any other method which will produce  
1613 an equitable apportionment.  
1614           Section 14. Section 213.054, Florida Statutes, is repealed.  
1615           Section 15. Subsections (3) and (5) of section 220.62,  
1616 Florida Statutes, are repealed.  
1617           Section 16. Subsection (5) of section 220.63, Florida  
1618 Statutes, is repealed.  
1619           Section 17. Section 220.64, Florida Statutes, is amended to  
1620 read:  
1621           220.64 Other provisions applicable to franchise tax.—To the  
1622 extent that they are not manifestly incompatible with the  
1623 provisions of this part, parts I, III, IV, V, VI, VIII, IX, and  
1624 X of this code and ss. 220.12, 220.13, 220.15, 220.1505, and  
1625 220.16 apply to the franchise tax imposed by this part. Under  
1626 rules prescribed in s. 220.131, a consolidated return may be  
1627 filed by any affiliated group of corporations composed of one or  
1628 more banks or savings associations, its or their Florida parent  
1629 corporation, and any nonbank or nonsavings subsidiaries of such  
1630 parent corporation.  
1631           Section 18. Section 220.51, Florida Statutes, is amended to  
1632 read:  
1633           220.51 Promulgation of rules and regulations.—  
1634           (1) In accordance with the Administrative Procedure Act,  
1635 chapter 120, the department is authorized to make, promulgate,



346858

1636 and enforce such reasonable rules and regulations, and to  
1637 prescribe such forms relating to the administration and  
1638 enforcement of the provisions of this code, as it may deem  
1639 appropriate, including:

1640 (a)~~(1)~~ Rules for initial implementation of this code and  
1641 for taxpayers' transitional taxable years commencing before and  
1642 ending after January 1, 1972;

1643 (b)~~(2)~~ Rules or regulations to clarify whether certain  
1644 groups, organizations, or associations formed under the laws of  
1645 this state or any other state, country, or jurisdiction shall be  
1646 deemed "taxpayers" for the purposes of this code, in accordance  
1647 with the legislative declarations of intent in s. 220.02; and

1648 (c)~~(3)~~ Regulations relating to consolidated reporting for  
1649 affiliated groups of corporations, in order to provide for an  
1650 equitable and just administration of this code with respect to  
1651 multicorporate taxpayers.

1652 (2) The department may adopt rules pursuant to ss.  
1653 120.536(1) and 120.54 to administer this chapter, including  
1654 rules interpreting each definition used in this chapter and  
1655 rules for interpreting the reasonable attribution of intangible  
1656 property to income-producing activity.

1657 Section 19. (1) It is the intent of the Legislature to  
1658 require all corporations filing Florida nexus group corporate  
1659 income tax returns to either file separate Florida income tax  
1660 returns or to make an election to file a consolidated Florida  
1661 income tax returns composed of the identical component members  
1662 to those that have consolidated their taxable incomes for  
1663 federal income tax purposes.

1664 (2) It is further the intent of the Legislature to clarify



346858

1665 that the amendments to ss. 220.23 and 220.809, Florida Statutes,  
1666 made by sections 44 and 45 of chapter 2002-218, Laws of Florida,  
1667 were intended to apply to all notifications of adjustments  
1668 required to be reported on or after January 1, 2003, by s.  
1669 220.23, Florida Statutes, and that those amendments were  
1670 intended to apply retroactively to all tax years represented by  
1671 such notifications and returns, including tax years prior to  
1672 January 1, 2003. It is the intent of the Legislature that this  
1673 clarification applies retroactively to January 1, 2003, and  
1674 applies retroactively to all returns and notices required to be  
1675 filed under s. 220.23, Florida Statutes, on or after January 1,  
1676 2003.

1677 (3) It is further the intent of the Legislature that the  
1678 amendments made by sections 5, 6, and 7 of this act to ss.  
1679 220.02(1), 220.03(1)(e) and (6), and 220.13(2)(a), Florida  
1680 Statutes, are remedial in nature and apply retroactively to tax  
1681 years beginning after December 31, 2000.

1682 Section 20. This act shall take effect upon becoming a law,  
1683 and applies to tax years ending on or after December 31, 2009,  
1684 except as otherwise expressly provided in section 18 of this  
1685 act.

1686  
1687 ===== T I T L E A M E N D M E N T =====

1688 And the title is amended as follows:

1689 Delete everything before the enacting clause  
1690 and insert:

1691 A bill to be entitled  
1692 An act relating to corporate income tax; creating the  
1693 "Florida Fair Business Competition Act"; amending s.



346858

1694 196.012, F.S.; conforming cross-references; amending  
1695 ss. 213.053 and 213.054, F.S.; conforming provisions  
1696 to the repeal of provisions allowing certain  
1697 deductions by certain financial institutions; amending  
1698 s. 220.02, F.S.; revising legislative intent with  
1699 respect to the classifications of organizations for  
1700 purposes of the corporate income tax; amending s.  
1701 220.03, F.S.; redefining the terms "corporation" and  
1702 "nonbusiness income"; providing requirements for the  
1703 classification of corporations that are partners in  
1704 partnerships; defining the term "tiered partnership  
1705 arrangement"; amending s. 220.13, F.S.; defining the  
1706 term "adjusted federal income" with respect to certain  
1707 expenses related to a business asset; defining the  
1708 term "taxable income" for purposes of certain  
1709 corporate entities; providing certain restrictions  
1710 with respect to the deductibility of intangible  
1711 expenses, interest expenses, and management fees;  
1712 providing requirements for filing tax returns;  
1713 providing for making certain calculations and  
1714 providing for certain deductions; amending s. 220.131,  
1715 F.S.; providing a limitation on the net operating loss  
1716 that may be claimed by a member of an affiliated  
1717 group; providing for the expiration of eligibility for  
1718 a specified election with respect to certain tax  
1719 filings; requiring that certain gross receipts be  
1720 excluded from sales between affiliated corporations  
1721 for purposes of determining taxable income; amending  
1722 s. 220.15, F.S.; revising requirements governing the



346858

1723           apportionment of adjusted federal income; clarifying  
1724           circumstances under which a sale of services occurs in  
1725           the state; amending s. 220.1501, F.S.; conforming  
1726           cross-references; creating s. 220.1505, F.S.;  
1727           providing requirements for the apportionment of income  
1728           of a financial institution whose business activity is  
1729           taxable within and without the state; providing  
1730           definitions; providing apportionment factors with  
1731           respect to receipts, property, and payroll; amending  
1732           s. 220.151, F.S.; providing for the apportionment of  
1733           the tax base for taxpayers furnishing certain  
1734           transportation services; defining the term "revenue  
1735           miles in this state"; amending s. 220.152, F.S.;  
1736           conforming provisions to changes made by the act;  
1737           repealing s. 213.054, F.S., relating to certain tax  
1738           exemptions or deductions; repealing ss. 220.62(3) and  
1739           (5), and 220.63(5), F.S., relating to the franchise  
1740           tax imposed on banks and savings associations;  
1741           amending s. 220.64, F.S.; conforming provisions to  
1742           changes made by the act; amending s. 220.51, F.S.;  
1743           authorizing the Department of Revenue to adopt rules;  
1744           providing legislative intent with respect to  
1745           corporations filing corporate income tax returns;  
1746           clarifying legislative intent with respect to the  
1747           retroactive application of certain amendments made by  
1748           chapter 2002-218, Laws of Florida; providing for  
1749           application; providing an effective date.