

By the Committee on Finance and Tax; and Senator Altman

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1 A bill to be entitled
2 An act relating to corporate income tax; creating the
3 "Florida Fair Business Competition Act"; amending s.
4 196.012, F.S.; conforming cross-references; amending
5 ss. 213.053 and 213.054, F.S.; conforming provisions
6 to the repeal of provisions allowing certain
7 deductions by certain financial institutions; amending
8 s. 220.02, F.S.; revising legislative intent with
9 respect to the classifications of organizations for
10 purposes of the corporate income tax; amending s.
11 220.03, F.S.; redefining the terms "corporation" and
12 "nonbusiness income"; providing requirements for the
13 classification of corporations that are partners in
14 partnerships; defining the term "tiered partnership
15 arrangement"; amending s. 220.13, F.S.; defining the
16 term "adjusted federal income" with respect to certain
17 expenses related to a business asset; defining the
18 term "taxable income" for purposes of certain
19 corporate entities; providing certain restrictions
20 with respect to the deductibility of intangible
21 expenses, interest expenses, and management fees;
22 providing requirements for filing tax returns;
23 providing for making certain calculations and
24 providing for certain deductions; amending s. 220.131,
25 F.S.; providing a limitation on the net operating loss
26 that may be claimed by a member of an affiliated
27 group; providing for the expiration of eligibility for
28 a specified election with respect to certain tax
29 filings; requiring that certain gross receipts be

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30 excluded from sales between affiliated corporations
31 for purposes of determining taxable income; amending
32 s. 220.15, F.S.; revising requirements governing the
33 apportionment of adjusted federal income; clarifying
34 circumstances under which a sale of services occurs in
35 the state; amending s. 220.1501, F.S.; conforming
36 cross-references; creating s. 220.1505, F.S.;
37 providing requirements for the apportionment of income
38 of a financial institution whose business activity is
39 taxable within and without the state; providing
40 definitions; providing apportionment factors with
41 respect to receipts, property, and payroll; amending
42 s. 220.151, F.S.; providing for the apportionment of
43 the tax base for taxpayers furnishing certain
44 transportation services; defining the term "revenue
45 miles in this state"; amending s. 220.152, F.S.;
46 conforming provisions to changes made by the act;
47 repealing s. 213.054, F.S., relating to certain tax
48 exemptions or deductions; repealing ss. 220.62(3) and
49 (5), and 220.63(5), F.S., relating to the franchise
50 tax imposed on banks and savings associations;
51 amending s. 220.64, F.S.; conforming provisions to
52 changes made by the act; amending s. 220.51, F.S.;
53 authorizing the Department of Revenue to adopt rules;
54 providing legislative intent with respect to
55 corporations filing corporate income tax returns;
56 clarifying legislative intent with respect to the
57 retroactive application of certain amendments made by
58 chapter 2002-218, Laws of Florida; providing for

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59 application; providing an effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. This act may be cited as the "Florida Fair
64 Business Competition Act."

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

68 196.012 Definitions.—For the purpose of this chapter, the
69 following terms are defined as follows, except where the context
70 clearly indicates otherwise:

71 (15) "New business" means:

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

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

83 3. An office space in this state owned and used by a
84 corporation newly domiciled in this state; provided such office
85 space houses 50 or more full-time employees of such corporation;
86 provided that such business or office first begins operation on
87 a site clearly separate from any other commercial or industrial

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88 operation owned by the same business.

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

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

95 2. A business establishing 25 or more jobs to employ 25 or
96 more full-time employees in this state, the sales factor of
97 which, as defined by s. 220.15(4) ~~s. 220.15(5)~~, for the facility
98 with respect to which it requests an economic development ad
99 valorem tax exemption is less than 0.50 for each year the
100 exemption is claimed; provided that such business increases
101 operations on a site colocated with a commercial or industrial
102 operation owned by the same business, resulting in a net
103 increase in employment of not less than 10 percent or an
104 increase in productive output of not less than 10 percent.

105 Section 3. Paragraph (b) of subsection (5) of section
106 213.053, Florida Statutes, is amended to read:

107 213.053 Confidentiality and information sharing.—

108 (5) Nothing contained in this section shall prevent the
109 department from:

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

114 Section 4. Section 213.054, Florida Statutes, is amended to
115 read:

116 213.054 Persons claiming tax exemptions or deductions;

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117 annual report.—The Department of Revenue shall be responsible
118 for monitoring the utilization of tax deductions authorized
119 pursuant to chapter 81-179, Laws of Florida. On or before
120 September 1 of each year, the department shall report to the
121 Chief Financial Officer the names and addresses of all persons
122 who have claimed a deduction pursuant to former s. 220.63(5).

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

125 220.02 Legislative intent.—

126 (1) It is the intent of the Legislature in enacting this
127 code to impose a tax upon all corporations, organizations,
128 associations, and other artificial entities which derive from
129 this state or from any other jurisdiction permanent and inherent
130 attributes not inherent in or available to natural persons, such
131 as perpetual life, transferable ownership represented by shares
132 or certificates, and limited liability for all owners. It is
133 intended that any limited liability company that is classified
134 as a partnership for federal income tax purposes and formed
135 under chapter 608 or qualified to do business in this state as a
136 foreign limited liability company not be subject to the tax
137 imposed by this code. It is the intent of the Legislature to
138 subject such corporations and other entities to taxation
139 hereunder for the privilege of conducting business, deriving
140 income, or existing within this state. This code is not intended
141 to tax, and shall not be construed so as to tax, any natural
142 person who engages in a trade, business, or profession in this
143 state under his or her own or any fictitious name, whether
144 individually as a proprietorship, ~~or~~ in partnership with others
145 when classified as a partnership for federal income tax

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146 purposes, or as a member or a manager of a limited liability
147 company classified as a partnership for federal income tax
148 purposes; any estate of a decedent or incompetent; or any
149 testamentary trust. However, a corporation or other taxable
150 entity which is or which becomes partners with one or more
151 natural persons shall not, merely by reason of being a partner,
152 exclude from its net income subject to tax its respective share
153 of partnership net income. It is the intent of the Legislature
154 to follow the classification of organizations under the Internal
155 Revenue Code to the greatest extent possible when not in
156 conflict with the express provisions of this code. This
157 statement of intent shall be given preeminent consideration in
158 any construction or interpretation of this code in order to
159 avoid any conflict between this code and the mandate in s. 5,
160 Art. VII of the State Constitution that no income tax be levied
161 upon natural persons who are residents and citizens of this
162 state.

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

166 220.03 Definitions.—

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

171 (e) "Corporation" includes all domestic corporations;
172 foreign corporations qualified to do business in this state or
173 actually doing business in this state; joint-stock companies;
174 limited liability companies, partnerships, and other entities of

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175 any type which are taxable as corporations for federal income
176 tax purposes under chapter 608; common-law declarations of
177 trust, under chapter 609; corporations not for profit, under
178 chapter 617; agricultural cooperative marketing associations,
179 under chapter 618; professional service corporations, under
180 chapter 621; foreign unincorporated associations, under chapter
181 622; private school corporations, under chapter 623; foreign
182 corporations not for profit which are carrying on their
183 activities in this state; and all other organizations,
184 associations, legal entities, and artificial persons which are
185 created by or pursuant to the statutes of this state, the United
186 States, or any other state, territory, possession, or
187 jurisdiction. The term "corporation" does not include
188 proprietorships, even if using a fictitious name; partnerships
189 of any type, as such, except as otherwise described in this
190 paragraph; limited liability companies that are taxable as
191 partnerships for federal income tax purposes; state or public
192 fairs or expositions, under chapter 616; estates of decedents or
193 incompetents; testamentary trusts; or private trusts.

194 (r) "Nonbusiness income" means an amount that cannot be
195 included in apportionable income ~~rents and royalties from real~~
196 ~~or tangible personal property, capital gains, interest,~~
197 ~~dividends, and patent and copyright royalties, to the extent~~
198 ~~that they do not arise from transactions and activities in the~~
199 ~~regular course of the taxpayer's trade or business. The term~~
200 ~~"nonbusiness income" does not include income from tangible and~~
201 ~~intangible property if the acquisition, management, and~~
202 ~~disposition of the property constitute integral parts of the~~
203 ~~taxpayer's regular trade or business operations, or any amounts~~

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204 ~~which could be included in apportionable income without~~
205 ~~violating the due process clause of the United States~~
206 ~~Constitution. For purposes of this definition, the term "income"~~
207 ~~means gross receipts less all items of loss, expense, or~~
208 ~~deduction, whether directly or indirectly attributable thereto,~~
209 ~~which were used to reduce adjusted federal income in the current~~
210 ~~taxable year or in a previous taxable year. For purposes of this~~
211 ~~definition, "income" means gross receipts less all expenses~~
212 ~~directly or indirectly attributable thereto. Functionally~~
213 ~~related dividends are presumed to be business income.~~

214 (6) PARTNERSHIPS.—A corporation that is a general or
215 limited partner in a partnership, as such, that conducts
216 business in this state, that earns or receives income in this
217 state, or that exists in this state is subject to taxation under
218 this chapter when the partnership activities, if conducted
219 directly by the corporation, would subject the corporation to
220 taxation under this chapter. In the case of a tiered partnership
221 arrangement, the activities of any partnership occupying a lower
222 tier of a tiered partnership arrangement are imputed,
223 proportionally, to all partners holding interests in the
224 partnership occupying higher tiers. A "tiered partnership
225 arrangement" is one in which some or all of the interests in one
226 partnership, or lower-tier partnership, are held by a second
227 partnership, or upper-tier partnership. A tiered partnership
228 arrangement may have two or more tiers. For purposes of this
229 subsection, the term "partnership" includes a limited liability
230 company that has made a federal election to be taxed as a
231 partnership or as a disregarded entity.

232 Section 7. Paragraph (a) of subsection (1) of section

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233 220.13, Florida Statutes, is amended, paragraph (m) is added to
234 subsection (2) of that section, and subsection (3) is added to
235 that section, read:

236 220.13 "Adjusted federal income" defined.—

237 (1) The term "adjusted federal income" means an amount
238 equal to the taxpayer's taxable income as defined in subsection
239 (2), or such taxable income of more than one taxpayer as
240 provided in s. 220.131, for the taxable year, adjusted as
241 follows:

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

243 1. The amount of any tax upon or measured by income,
244 excluding taxes based on gross receipts or revenues, paid or
245 accrued as a liability to the District of Columbia or any state
246 of the United States which is deductible from gross income in
247 the computation of taxable income for the taxable year.

248 2. The amount of interest which is excluded from taxable
249 income under s. 103(a) of the Internal Revenue Code or any other
250 federal law, less the associated expenses disallowed in the
251 computation of taxable income under s. 265 of the Internal
252 Revenue Code or any other law, excluding 60 percent of any
253 amounts included in alternative minimum taxable income, as
254 defined in s. 55(b)(2) of the Internal Revenue Code, if the
255 taxpayer pays tax under s. 220.11(3).

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

260 4. That portion of the wages or salaries paid or incurred
261 for the taxable year which is equal to the amount of the credit

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262 allowable for the taxable year under s. 220.181. This
263 subparagraph shall expire on the date specified in s. 290.016
264 for the expiration of the Florida Enterprise Zone Act.

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

270 6. The amount of emergency excise tax paid or accrued as a
271 liability to this state under chapter 221 which tax is
272 deductible from gross income in the computation of taxable
273 income for the taxable year.

274 7. That portion of assessments to fund a guaranty
275 association incurred for the taxable year which is equal to the
276 amount of the credit allowable for the taxable year.

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

282 9. The amount taken as a credit for the taxable year under
283 s. 220.1895.

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

287 11. The amount taken as a credit for the taxable year under
288 s. 220.187.

289 12. The amount taken as a credit for the taxable year under
290 s. 220.192.

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291 13. The amount taken as a credit for the taxable year under
292 s. 220.193.

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

296 15. Any amount allowable as a deduction for federal income
297 tax purposes under s. 167 or s. 168 of the Internal Revenue Code
298 of 1986, as amended, for the taxable year to the extent that
299 such amount includes bonus depreciation allowable as deduction
300 under s. 168(k).

301 16. All expenses directly or indirectly related to a
302 business asset which were treated as nonbusiness income that
303 were deducted in the year of sale and the 2 previous years. Such
304 recapture of expenses shall be made in the year the income is
305 determined to be nonbusiness income and shall recapture those
306 expenses deducted in the current and in the previous 2 years.

307 (2) For purposes of this section, a taxpayer's taxable
308 income for the taxable year means taxable income as defined in
309 s. 63 of the Internal Revenue Code and properly reportable for
310 federal income tax purposes for the taxable year, but subject to
311 the limitations set forth in paragraph (1)(b) with respect to
312 the deductions provided by ss. 172 (relating to net operating
313 losses), 170(d)(2) (relating to excess charitable
314 contributions), 404(a)(1)(D) (relating to excess pension trust
315 contributions), 404(a)(3)(A) and (B) (to the extent relating to
316 excess stock bonus and profit-sharing trust contributions), and
317 1212 (relating to capital losses) of the Internal Revenue Code,
318 except that, subject to the same limitations, the term:

319 (m) "Taxable income," in the case of any partnership,

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320 organization, association, legal entity, or artificial person
321 taxable as a corporation for federal income tax purposes, means
322 taxable income determined as if such partnership, organization,
323 association, legal entity, or artificial person were required to
324 file or had filed a federal corporate income tax return under
325 the Internal Revenue Code.

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

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

330 1. "Related entity" means any artificial entity that would
331 be a member of the taxpayer's affiliated group under s. 1504 of
332 the Internal Revenue Code during all or any portion of the
333 taxable year, except using an ownership percentage of 50 percent
334 rather than 80 percent. A related entity includes any entity,
335 other than a natural person, which would be included in the
336 affiliated group based upon a 50 percent ownership percentage if
337 it were organized as a corporation.

338 2. "Intangible expenses" means the following described
339 amounts to the extent these amounts are allowed as deductions in
340 determining federal taxable income under the Internal Revenue
341 Code before the application of any net operating loss deduction
342 and special deductions for the taxable year:

343 a. Expenses, losses, and costs directly or indirectly for,
344 related to, or in association with the acquisition, use,
345 maintenance, management, ownership, sale, exchange, or any other
346 disposition of intangible property.

347 b. Royalty, patent, technical, trademark, and copyright
348 fees;

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349 c. Licensing fees; or
350 d. Other substantially similar expenses and costs,
351 including, but not limited to, interest and losses from
352 factoring transactions.

353 3. "Intangible property" means patents, patent
354 applications, trade names, trademarks, service marks,
355 copyrights, trade secrets, and substantially similar types of
356 intangible assets.

357 4. "Interest expenses" means amounts that are allowed as
358 deductions under s. 163 of the Internal Revenue Code in
359 determining federal taxable income before the application of any
360 net operating loss deductions and special deductions for the
361 taxable year.

362 5. "Management fees" means expenses and costs paid for
363 services, including, but not limited to, management overhead,
364 management supervision, accounts receivable and payable,
365 employee benefit plans, insurance, legal, payroll, data
366 processing, purchasing, tax, financial and securities, billing,
367 accounting, reporting and compliance services, or similar
368 services, only to the extent that the amounts are allowed as a
369 deduction or cost in determining taxable net income under the
370 Internal Revenue Code before the application of any net
371 operating loss deduction and special deductions for the taxable
372 year.

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

376 (b) Except as provided in paragraph (c), in determining its
377 adjusted federal income under this section and s. 220.131, a

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378 corporation subject to tax shall add to its taxable income
379 intangible expenses, interest expenses, and management fees that
380 are paid, accrued, or incurred directly or indirectly with one
381 or more related entities. For income received from a pass-
382 through entity or a disregarded entity, the corporation is
383 deemed to have received its share of both the income and
384 expenses of the pass-through entity or disregarded entity for
385 purposes of this subsection.

386 (c) Except as provided in paragraph (d), the addition of
387 intangible expenses, interest expenses, and management fees
388 otherwise required in a taxable year under this subsection for a
389 specific related entity transaction is not required if:

390 1. The taxpayer and the recipient are both included in the
391 same Florida consolidated tax return filed under s. 220.131 for
392 the taxable year;

393 2. The taxpayer and the executive director or his or her
394 designee agree in writing to alternative computations or
395 adjustments. The executive director or his or her designee may
396 approve such agreement only if the taxpayer has clearly
397 established to the satisfaction of the executive director or his
398 or her designee that the disallowance of the deduction is
399 unreasonable and that the proposed alternative method of
400 determining the measure of the tax accurately reflects the
401 activity, business, income, and capital of the taxpayers within
402 this state. The agreement must be signed by the executive
403 director or his or her designee and may not exceed 4 years;

404 3. The taxpayer makes a disclosure on its return and
405 establishes by clear and convincing evidence that:

406 a. The recipient was subject to an income tax or franchise

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- 407 tax measured in whole or part by net income in its state or
408 country of commercial domicile. If the recipient is a foreign
409 corporation, the foreign nation must have in force a
410 comprehensive income tax treaty with the United States;
- 411 b. The tax base for such tax included the intangible
412 expense, management fee, or interest expense paid, accrued, or
413 incurred by the taxpayer;
- 414 c. The aggregate effective tax rate applied is no less than
415 5.5 percent;
- 416 d. The transaction did not have Florida tax avoidance as a
417 principle purpose;
- 418 e. The recipient regularly engages in the same business
419 with third parties; and
- 420 f. The transaction was made at a commercially reasonable
421 rate and at arm's length terms similar to those with third
422 parties; or
- 423 4. The taxpayer makes a disclosure on its return and
424 establishes by clear and convincing evidence that:
- 425 a. The related entity, during the same taxable year,
426 directly or indirectly paid, received, or incurred the amount of
427 the obligation to or from a person or entity that is not a
428 related entity;
- 429 b. The transaction was done for a valid business purpose;
- 430 c. The payments are limited to a reimbursement of the
431 amounts paid to a person or entity that is not a related party;
432 and
- 433 d. The unrelated entity regularly engages in the same
434 business with third parties on a substantial basis.
- 435 (d) The exceptions described in subparagraphs (c)3. and 4.

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436 do not apply:

437 1. To interest paid by a taxpayer in connection with a debt
438 incurred to acquire the taxpayer's or a related entity's assets
439 or stock in a transaction referenced in s. 368 of the Internal
440 Revenue Code. For purposes of this paragraph, acquisition
441 interest paid by a taxpayer to a person or entity that is not a
442 related entity shall be treated as if made to a related entity;

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

445 3. If the related entity is primarily engaged in managing,
446 acquiring, or maintaining intangible property or related party
447 financing and a primary purpose of the transaction was the
448 avoidance of Florida tax; or

449 4. In those instances where the taxpayer files with the
450 related entity or the related entity files with another related
451 entity an income tax return or report where such return or
452 report is due because of the imposition of a tax on or measured
453 by income, and where such income tax return or report results in
454 the elimination of the tax effects from transactions directly or
455 indirectly between the taxpayer and the related member.

456 (e) To the extent that a taxpayer is required to make an
457 adjustment under paragraphs (b) and (c) for a specific related
458 entity transaction, the corresponding related entity shall make
459 a corresponding subtraction to its taxable income, if subject to
460 tax in Florida.

461 (f) The amount of a taxpayer's net operating loss carryover
462 from tax years ending prior to December 31, 2009, to a tax year
463 ending on or after December 31, 2009, shall be adjusted to
464 account for the add back of intangible expenses, interest

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465 expenses, and management fees under this subsection. Under no
466 circumstances may this recalculation increase the amount of a
467 net operating loss carryover or deduction.

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

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

476 (i) This subsection does not limit or negate the executive
477 director's authority to make adjustments under s. 220.131(2), s.
478 220.44, or s. 220.152.

479 (j) Each taxpayer shall provide the following information
480 to the department along with its tax return regarding each
481 related entity transaction:

- 482 a. The name of the recipient;
483 b. The state or country of domicile of the recipient;
484 c. The amount paid to the recipient; and
485 d. A complete description of the payment made to the
486 recipient.

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

491 Section 8. Subsections (3), (4), and (5) of section
492 220.131, Florida Statutes, are amended, and subsections (6) and
493 (7) are added to that section, to read:

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494 220.131 Adjusted federal income; affiliated groups.—

495 (3) The filing of a consolidated return for any taxable
496 year shall require the filing of consolidated returns for all
497 subsequent taxable years so long as the filing taxpayers remain
498 members of the affiliated group or, in the case of a group
499 having component members not subject to tax under this code, so
500 long as a consolidated return is filed by such group for federal
501 income tax purposes, ~~unless the director consents to the filing~~
502 ~~of separate returns.~~

503 (4) The computation of consolidated taxable income for the
504 members of an affiliated group of corporations subject to tax
505 hereunder shall be made in the same manner and under the same
506 procedures, including all intercompany adjustments and
507 eliminations, as are required for consolidating the incomes of
508 affiliated corporations for the taxable year for federal income
509 tax purposes in accordance with s. 1502 of the Internal Revenue
510 Code, and the amount shown as consolidated taxable income shall
511 be the amount subject to tax under this code. Notwithstanding
512 the foregoing, a net operating loss that was incurred by a
513 taxpayer before filing as a member of a consolidated group of
514 corporations pursuant to this section is limited to that
515 member's taxable income included in the consolidated taxable
516 income for the year in which a net operating loss carryover is
517 sought to be used. If all members of the affiliated group filed
518 separate Florida corporate income tax returns for all years from
519 which a net operating loss carryover is available, this
520 limitation does not apply.

521 (5) Each taxpayer shall apportion adjusted federal income
522 under s. 220.15 or s. 220.1505 as a member of an affiliated

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523 group which files a consolidated return under this section on
524 the basis of apportionment factors described in s. 220.15 or s.
525 220.1505. For the purposes of this subsection, each special
526 industry member included in an affiliated group filing a
527 consolidated return hereunder, which member would otherwise be
528 permitted to use a special method of apportionment under s.
529 220.151, shall construct the numerator of its sales, property,
530 and payroll factors, respectively, by multiplying the
531 denominator of each such factor by the premiums or revenue miles
532 factor ratio otherwise applicable pursuant to s. 220.151 in the
533 manner prescribed by the department by rule.

534 (6) For taxable years ending on or after July 1, 2009,
535 those members of an affiliated group of corporations that filed
536 Florida consolidated corporate income tax returns pursuant to
537 the election provided in s. 220.131(1), Florida Statutes (1985),
538 which allowed such members to make an election within 90 days
539 after December 20, 1984, or upon filing the member's first
540 return after December 20, 1984, whichever occurred later, are no
541 longer eligible to file and shall cease filing a Florida
542 consolidated corporate income tax return pursuant to that
543 election.

544 (7) The sales factor, as determined by s. 220.15(4), shall
545 not include gross receipts from sales between affiliated
546 corporations that file a consolidated return under this section.
547 Such amounts shall be excluded from the sales factor even though
548 income from such sales is included in the computation of taxable
549 income described in subsection (4) and s. 1502 of the Internal
550 Revenue Code and the regulations thereunder.

551 Section 9. Section 220.15, Florida Statutes, is amended to

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552 read:

553 220.15 Apportionment of adjusted federal income.—

554 (1) Except as provided in ss. 220.1505, 220.151, and
555 220.152, adjusted federal income as defined in s. 220.13 shall
556 be apportioned to this state by taxpayers doing business within
557 and without this state by multiplying it by an apportionment
558 fraction composed of a sales factor representing 50 percent of
559 the fraction, a property factor representing 25 percent of the
560 fraction, and a payroll factor representing 25 percent of the
561 fraction. If any factor described in subsection (2), subsection
562 (4), or subsection (5) has a denominator that is zero or is
563 determined by the department to be insignificant, the relative
564 weights of the other factors in the denominator of the
565 apportionment fraction shall be as follows:

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

569 (b) If the denominator for the sales factor is zero or is
570 insignificant, the weighted percentage for the property and
571 payroll factors shall change from 25 percent to 50 percent,
572 respectively.

573 (c) If the denominator for either the property or payroll
574 factor is zero or is insignificant, the weighted percentage for
575 the other shall be 33 1/3 percent, and the weighted percentage
576 for the sales factor shall be 66 2/3 percent.

577 (2) The property factor is a fraction the numerator of
578 which is the average value of the taxpayer's real and tangible
579 personal property owned or rented and used in this state during
580 the taxable year or period and the denominator of which is the

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581 average value of such property owned or rented and used
582 everywhere.

583 (a) Real and tangible personal property owned by the
584 taxpayer shall be valued at original cost. Real and tangible
585 personal property rented by the taxpayer shall be valued at 8
586 times the net annual rental rate paid by the taxpayer less any
587 annual rental rate received from subrentals.

588 (b) The average value of real and tangible personal
589 property shall be determined by averaging the value at the
590 beginning and the end of the taxable year or period, unless the
591 department determines that an averaging of monthly values during
592 the taxable year or period is reasonably required to reflect
593 properly the average value of the taxpayer's real and tangible
594 personal property.

595 (c) The property factor fraction shall not include any real
596 or tangible personal property located in this state with respect
597 to which it is certified to the Department of Revenue that such
598 property is dedicated exclusively to research and development
599 activities performed pursuant to sponsored research contracts
600 conducted in conjunction with and through a university that is a
601 member of the State University System or a nonpublic university
602 that is chartered in Florida and conducts graduate programs at
603 the professional or doctoral level. The Board of Governors of
604 the State University System must certify the contracts for
605 members of the State University System, and the president of the
606 university must certify the contracts for a nonpublic
607 university. As used in this paragraph, "sponsored research
608 contract" means an agreement executed by parties that include at
609 least the university and the taxpayer. Funding for sponsored

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610 research contracts may be provided from public or private
611 sources.

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

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

619 ~~(b) Assets in the nature of loans, including balances due~~
620 ~~from depository institutions, repurchase agreements, federal~~
621 ~~funds sold, and bankers acceptances, which assets are located in~~
622 ~~this state; installment obligations on loans for which the~~
623 ~~customer initially applied at an office located in this state;~~
624 ~~or loans secured by mortgages, deeds of trust, or other liens~~
625 ~~upon real or tangible personal property located in this state;~~

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

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

630 ~~(e) Investments in securities that generate business income~~
631 ~~if the taxpayer's commercial domicile is in the state, unless~~
632 ~~such securities have acquired a discrete business situs~~
633 ~~elsewhere;~~

634 ~~(f) Securities used to maintain reserves against deposits~~
635 ~~to meet federal or state deposit requirements, based on the~~
636 ~~ratio that total deposits in this state bear to total deposits~~
637 ~~everywhere;~~

638 ~~(g) Securities held by a state treasurer or other public~~

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639 ~~official or pledged to secure public funds or trust funds~~
640 ~~deposited with the taxpayer if the office at which the secured~~
641 ~~deposits are maintained is in this state;~~

642 ~~(h) Leases of tangible personal property to another if the~~
643 ~~taxpayer's commercial domicile is in the state, unless the~~
644 ~~taxpayer establishes that the location of the leased tangible~~
645 ~~personal property is in another state or states for the entire~~
646 ~~taxable year and the taxpayer is taxable in such other state or~~
647 ~~states;~~

648 ~~(i) Installment sale agreements originally executed by a~~
649 ~~taxpayer or its agent to sell real or tangible personal property~~
650 ~~located in this state; or~~

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

653 ~~(3)(4)~~ The payroll factor is a fraction the numerator of
654 which is the total amount paid in this state during the taxable
655 year or period by the taxpayer for compensation and the
656 denominator of which is the total compensation paid everywhere
657 during the taxable year or period.

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

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

662 1. The employee's service is performed entirely within the
663 state; or

664 2. The employee's service is performed both within and
665 without the state, but the service performed without the state
666 is incidental to the employee's service within the state; or

667 3. Some of the employee's service is performed in the

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668 state, and

669 a. The base of operations or, if there is no base of
670 operations, the place from which the service is directed or
671 controlled is in the state, or

672 b. The base of operations or the place from which the
673 service is directed or controlled is not in any state in which
674 some part of the service is performed and the employee's
675 residence is in this state.

676 (c) The payroll factor fraction shall not include any
677 compensation paid to any employee located in this state when it
678 is certified to the Department of Revenue that such compensation
679 was paid to employees dedicated exclusively to research and
680 development activities performed pursuant to sponsored research
681 contracts conducted in conjunction with and through a university
682 that is a member of the State University System or a nonpublic
683 university that is chartered in Florida and conducts graduate
684 programs at the professional or doctoral level. The Board of
685 Governors of the State University System must certify the
686 contracts for members of the State University System, and the
687 president of the university must certify the contracts for a
688 nonpublic university. As used in this paragraph, "sponsored
689 research contract" means an agreement executed by parties that
690 include at least the university and the taxpayer. Funding for
691 sponsored research contracts may be provided from public or
692 private sources.

693 (4)~~(5)~~ The sales factor is a fraction the numerator of
694 which is the total sales of the taxpayer in this state during
695 the taxable year or period and the denominator of which is the
696 total sales of the taxpayer everywhere during the taxable year

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697 or period.

698 (a) As used in this subsection, the term "sales" means all
699 gross receipts of the taxpayer except interest, dividends,
700 rents, royalties, and gross receipts from the sale, exchange,
701 maturity, redemption, or other disposition of securities.

702 However:

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

706 2. Royalty income is included in the term if a significant
707 portion of the taxpayer's business consists of dealing in or
708 with the production, exploration, or development of minerals.
709 Income from the sale, assignment, or licensing of intangible
710 property is also included in the term.

711 (b)1. Sales of tangible personal property occur in this
712 state if the property is delivered or shipped to a purchaser
713 within this state, regardless of the f.o.b. point, other
714 conditions of the sale, or ultimate destination of the property,
715 unless shipment is made via a common or contract carrier.
716 However, for industries in SIC Industry Number 2037, if the
717 ultimate destination of the product is to a location outside
718 this state, regardless of the method of shipment or f.o.b.
719 point, the sale shall not be deemed to occur in this state.

720 2. When citrus fruit is delivered by a cooperative for a
721 grower-member, by a grower-member to a cooperative, or by a
722 grower-participant to a Florida processor, the sales factor for
723 the growers for such citrus fruit delivered to such processor
724 shall be the same as the sales factor for the most recent
725 taxable year of that processor. That sales factor, expressed

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726 only as a percentage and not in terms of the dollar volume of
727 sales, so as to protect the confidentiality of the sales of the
728 processor, shall be furnished on the request of such a grower
729 promptly after it has been determined for that taxable year.

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

733 (c) Sales of services are in this state if the buyers
734 receive the benefit of the services in this state. A buyer
735 receives the benefit of services in this state if any one of the
736 following applies:

737 1. The service relates to real property located in this
738 state;

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

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

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

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

747 (d) If the purchaser of a service receives the benefit of a
748 service in more than one state, the gross receipts from the
749 performance of the service are included in the numerator of the
750 sales factor according to the portion of the service received in
751 this state.

752 (e) If the taxpayer is not subject to income tax in the
753 state in which the benefit of the service is received, the
754 benefit of the service is received in this state to the extent

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755 that the taxpayer's employees or representatives performed
756 services from a location in this state. Fifty percent of the
757 taxpayer's receipts that are considered received in this state
758 under this paragraph shall be included in the numerator of the
759 sales factor.

760 (f) Sales that are not attributable or assignable to any
761 taxing jurisdiction and sales that are attributable or
762 assignable to jurisdictions where the taxpayer is not subject to
763 an income tax, or where the jurisdiction does not impose an
764 income tax, are eliminated from both the numerator and
765 denominator of the sales factor.

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

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

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

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

778 ~~4. Interest charged to customers at places of business~~
779 ~~maintained within this state for carrying debit balances of~~
780 ~~margin accounts, without deduction of any costs incurred in~~
781 ~~carrying such accounts;~~

782 ~~5. Interest, fees, commissions, or other charges or gains~~
783 ~~from loans secured by mortgages, deeds of trust, or other liens~~

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784 ~~upon real or tangible personal property located in this state or~~
785 ~~from installment sale agreements originally executed by a~~
786 ~~taxpayer or the taxpayer's agent to sell real or tangible~~
787 ~~personal property located in this state;~~

788 ~~6. Rents from real or tangible personal property located in~~
789 ~~this state; or~~

790 ~~7. Any other gross income, including other interest,~~
791 ~~resulting from the operation as a financial organization within~~
792 ~~this state.~~

793

794 ~~In computing the amounts under this paragraph, any amount~~
795 ~~received by a member of an affiliated group (determined under s.~~
796 ~~1504(a) of the Internal Revenue Code, but without reference to~~
797 ~~whether any such corporation is an "includable corporation"~~
798 ~~under s. 1504(b) of the Internal Revenue Code) from another~~
799 ~~member of such group shall be included only to the extent such~~
800 ~~amount exceeds expenses of the recipient directly related~~
801 ~~thereto.~~

802 ~~(6) The term "financial organization," as used in this~~
803 ~~section, includes any bank, trust company, savings bank,~~
804 ~~industrial bank, land bank, safe-deposit company, private~~
805 ~~banker, savings and loan association, credit union, cooperative~~
806 ~~bank, small loan company, sales finance company, or investment~~
807 ~~company.~~

808 ~~(5)(7)~~ (5) The term "everywhere," as used in the computation of
809 apportionment factor denominators under this section, means "in
810 all states of the United States, the District of Columbia, the
811 Commonwealth of Puerto Rico, any territory or possession of the
812 United States, and any foreign country, or any political

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813 subdivision of the foregoing.”

814 (6)~~(8)~~ No research and development activities certified as
815 being conducted within this state in conjunction with and
816 through a university that is a member of the State University
817 System or a nonpublic university that is chartered in Florida
818 and conducts graduate programs at the professional or doctoral
819 level shall cause any corporation to become subject to the taxes
820 imposed by this chapter if the corporation would otherwise not
821 be subject to the tax levied under this chapter. The property
822 and payroll eliminated from the apportionment formula pursuant
823 to the provisions of paragraphs (2) (c) and (3) (c) ~~(4) (e)~~ shall
824 be eliminated only for the duration of the contractual period
825 specified in the contracts for the conduct of the sponsored
826 research. The reduction in tax due as a result of the property
827 and payroll eliminated from the apportionment formula pursuant
828 to the provisions of paragraphs (2) (c) and (3) (c) ~~(4) (e)~~ shall
829 not exceed the amount paid to the university for the conduct of
830 the sponsored research. No sponsored research contracts in
831 existence prior to July 1, 1998, shall be eligible to
832 participate in the provisions of paragraphs (2) (c) and (3) (c)
833 ~~(4) (e)~~.

834 Section 10. Section 220.1501, Florida Statutes, is amended
835 to read:

836 220.1501 Rulemaking authority to implement s. 220.15(2) (c),
837 (3) (c) ~~(4) (e)~~, and (8).—The Department of Revenue has authority
838 to adopt rules pursuant to the Administrative Procedure Act to
839 implement s. 220.15(2) (c), (3) (c) ~~(4) (e)~~, and (8), as created by
840 chapter 98-325, Laws of Florida.

841 Section 11. Section 220.1505, Florida Statutes, is created

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842 to read:

843 220.1505 Apportionment; financial institutions.-

844 (1) APPORTIONMENT AND ALLOCATION.-

845 (a) Except as otherwise specifically provided by law, a
846 financial institution whose business activity is taxable both
847 within and without this state shall allocate and apportion its
848 adjusted federal income as provided in this section. A financial
849 institution organized under the laws of a foreign country, the
850 Commonwealth of Puerto Rico, or a territory or possession of the
851 United States whose effectively connected income, as defined
852 under the Internal Revenue Code, is taxable both within this
853 state and within another state, other than the state in which it
854 is organized, shall apportion its adjusted federal income as
855 provided in this section.

856 (b) Adjusted federal income shall be apportioned to this
857 state by multiplying it by an apportionment fraction composed of
858 a receipts factor representing 50 percent of the fraction, a
859 property factor representing 25 percent of the fraction, and a
860 payroll factor representing 25 percent of the fraction. If any
861 factor described in subsection (3), subsection (4), or
862 subsection (5) has a denominator that is zero or is determined
863 by the department to be insignificant, the relative weights of
864 the other factors in the denominator of the apportionment
865 fraction shall be as follows:

866 1. If the denominators for any two factors are zero or are
867 insignificant, the weighted percentage for the remaining factor
868 shall be 100 percent.

869 2. If the denominator for the receipts factor is zero or
870 insignificant, the weighted percentage for the property and

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871 payroll factors shall change from 25 percent to 50 percent,
872 respectively.

873 3. If the denominator for either the property or payroll
874 factor is zero or insignificant, the weighted percentage for the
875 other shall be 33 1/3 percent and the weighted percentage for
876 the receipts factor shall be 66 2/3 percent.

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

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

880 (a) "Billing address" means the location indicated in the
881 books and records of the taxpayer on the first day of the
882 taxable year, or on such later date in the taxable year when the
883 customer relationship began, as the address where any notice,
884 statement, or bill relating to a customer's account is mailed.

885 (b) "Borrower or credit card holder located in this state"
886 means:

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

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

892 (c) "Commercial domicile" means:

893 1. The headquarters of the trade or business which is the
894 place from which the trade or business is principally managed
895 and directed; or

896 2. If a taxpayer is organized under the laws of a foreign
897 country, the Commonwealth of Puerto Rico, or any territory or
898 possession of the United States, such taxpayer's commercial
899 domicile shall be deemed for the purposes of this section to be

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900 the state of the United States or the District of Columbia from
901 which such taxpayer's trade or business in the United States is
902 principally managed and directed. It shall be presumed, subject
903 to rebuttal, that the location from which the taxpayer's trade
904 or business is principally managed and directed is the state of
905 the United States or the District of Columbia to which the
906 greatest number of employees are regularly connected or out of
907 which they are working, irrespective of where the services of
908 such employees are performed, as of the last day of the taxable
909 year.

910 (d) "Compensation" means wages, salaries, commissions, and
911 any other form of remuneration paid to employees for personal
912 services that are included in such employee's gross income under
913 the Internal Revenue Code. In the case of employees not subject
914 to the Internal Revenue Code, such as those employed in foreign
915 countries, the determination of whether such payments would
916 constitute gross income to such employees under the Internal
917 Revenue Code shall be made as though such employees were subject
918 to the Internal Revenue Code.

919 (e) "Credit card" means credit, travel, or entertainment
920 card.

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

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

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929 (h) "Financial institution" means:

930 1. Any corporation or other business entity registered
931 under state law as a bank holding company or registered under
932 the Federal Bank Holding Company Act of 1956, as amended, or
933 registered as a savings and loan holding company under the
934 Federal National Housing Act, as amended.

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

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

940 4. Any bank or thrift institution incorporated or organized
941 under the laws of any state.

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

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

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

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

951 9. Any investment company.

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

955 11. A corporation or other business entity that derives
956 more than 50 percent of its total gross income for financial
957 accounting purposes from finance leases. For purposes of this

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958 subsection, a "finance lease" means any lease transaction that
959 is the functional equivalent of an extension of credit and that
960 transfers substantially all of the benefits and risks incident
961 to the ownership of property. The phrase includes any "direct
962 financing lease" or "leverage lease" that meets the criteria of
963 Financial Accounting Standards Board Statement No. 13,
964 "Accounting for Leases" or any other lease that is accounted for
965 as a financing lease by a lessor under generally accepted
966 accounting principles. For this classification to apply:

967 a. The average of the gross income in the current tax year
968 and immediately preceding 2 tax years must satisfy the more than
969 50 percent requirement; and

970 b. Gross income from incidental or occasional transactions
971 shall be disregarded; or

972 12. Any other person or business entity that derives more
973 than 50 percent of its gross income from activities that a
974 person described in subparagraphs 2.-9. and 11. is authorized to
975 transact. For the purpose of this subparagraph, the computation
976 of gross income shall not include income from nonrecurring,
977 extraordinary items. The department may exclude any person from
978 the application of this subparagraph upon such person proving,
979 by clear and convincing evidence, that the income-producing
980 activity of such person is not in substantial competition with
981 those persons described in subparagraphs 2.-9. and 11.

982 (i) "Gross rents" means the actual sum of money or other
983 consideration payable for the use or possession of property.

984 "Gross rents" includes, but is not limited to:

985 1. Any amount payable for the use or possession of real
986 property or tangible property whether designated as a fixed sum

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987 of money or as a percentage of receipts, profits, or otherwise;

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

992 3. A proportionate part of the cost of any improvement to
993 real property made by or on behalf of the taxpayer which reverts
994 to the owner or lessor upon termination of a lease or other
995 arrangement. The amount to be included in gross rents is the
996 amount of amortization or depreciation allowed in computing the
997 taxable income base for the taxable year. However, if a building
998 is erected on leased land by or on behalf of the taxpayer, the
999 value of the land is determined by multiplying the gross rent by
1000 eight and the value of the building is determined in the same
1001 manner as if owned by the taxpayer.

1002 4. The following are not included in the term "gross
1003 rents":

1004 a. Reasonable amounts payable as separate charges for water
1005 and electric service furnished by the lessor;

1006 b. Reasonable amounts payable as service charges for
1007 janitorial services furnished by the lessor;

1008 c. Reasonable amounts payable for storage, if such amounts
1009 are payable for space not designated and not under the control
1010 of the taxpayer; and

1011 d. That portion of any rental payment which is applicable
1012 to the space subleased from the taxpayer and not used by it.

1013 (j) "Loan" means any extension of credit resulting from
1014 direct negotiations between the taxpayer and its customer, or
1015 the purchase, in whole or in part, of such extension of credit

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1016 from another. Loans include participations, syndications, and
1017 leases treated as loans for federal income tax purposes. Loans
1018 shall not include: properties treated as loans under s. 595 of
1019 the Internal Revenue Code; futures or forward contracts;
1020 options; notional principal contracts such as swaps; credit card
1021 receivables, including purchased credit card relationships;
1022 noninterest bearing balances due from depository institutions;
1023 cash items in the process of collection; federal funds sold;
1024 securities purchased under agreements to resell; assets held in
1025 a trading account; securities; interests in a REMIC, or other
1026 mortgage-backed or asset-backed security; and other similar
1027 items.

1028 (k) "Loan secured by real property" means that 50 percent
1029 or more of the aggregate value of the collateral used to secure
1030 a loan or other obligation, when valued at fair market value as
1031 of the time the original loan or obligation was incurred, was
1032 real property.

1033 (l) "Merchant discount" means the fee, or negotiated
1034 discount, charged to a merchant by the taxpayer for the
1035 privilege of participating in a program whereby a credit card is
1036 accepted in payment for merchandise or services sold to the card
1037 holder.

1038 (m) "Participation" means an extension of credit in which
1039 an undivided ownership interest is held on a pro rata basis in a
1040 single loan or pool of loans and related collateral. In a loan
1041 participation, the credit originator initially makes the loan
1042 and then subsequently resells all or a portion of it to other
1043 lenders. The participation may or may not be known to the
1044 borrower.

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1045 (n) "Person" means an individual, estate, trust,
1046 partnership, corporation, and any other business entity.

1047 (o) "Principal base of operations" with respect to
1048 transportation property means the place of more or less
1049 permanent nature from which the property is regularly directed
1050 or controlled. With respect to an employee, the "principal base
1051 of operations" means the place of more or less permanent nature
1052 from which the employee regularly:

1053 1. Starts his or her work and to which he or she
1054 customarily returns in order to receive instructions from his or
1055 her employer;

1056 2. Communicates with his or her customers or other persons;
1057 or

1058 3. Performs any other functions necessary to the exercise
1059 of his or her trade or profession at some other point or points.

1060 (p) "Real property owned" and "tangible personal property
1061 owned" mean real and tangible personal property, respectively:

1062 1. On which the taxpayer may claim depreciation for federal
1063 income tax purposes; or

1064 2. To which the taxpayer holds legal title and on which no
1065 other person may claim depreciation for federal income tax
1066 purposes, or could claim depreciation if subject to federal
1067 income tax. Real and tangible personal property do not include
1068 coin, currency, or property acquired in lieu of or pursuant to a
1069 foreclosure.

1070 (q) "Regular place of business" means an office at which
1071 the taxpayer carries on its business in a regular and systematic
1072 manner and which is continuously maintained, occupied, and used
1073 by employees of the taxpayer.

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1074 (r) "State" means a state of the United States, the
1075 District of Columbia, the Commonwealth of Puerto Rico, any
1076 territory or possession of the United States, or any foreign
1077 country.

1078 (s) "Syndication" means an extension of credit in which two
1079 or more persons fund and each person is at risk only up to a
1080 specified percentage of the total extension of credit or up to a
1081 specified dollar amount.

1082 (t) "Taxable" means:

1083 1. That a taxpayer is subject in another state to a net
1084 income tax, a franchise tax measured by net income, a franchise
1085 tax for the privilege of doing business, a corporate stock tax
1086 including a bank shares tax, a single business tax, an earned
1087 surplus tax, or any tax that is imposed upon or measured by net
1088 income; or

1089 2. That another state has jurisdiction to subject the
1090 taxpayer to any of such taxes regardless of whether, in fact,
1091 the state does or does not.

1092 (u) "Transportation property" means vehicles and vessels
1093 capable of moving under their own power, such as aircraft,
1094 trains, water vessels, and motor vehicles, as well as any
1095 equipment or containers attached to such property, such as
1096 rolling stock, barges, trailers, or the like.

1097 (3) RECEIPTS FACTOR.—

1098 (a) General.—The receipts factor is a fraction, the
1099 numerator of which is the receipts of the taxpayer in this state
1100 during the taxable year and the denominator of which is the
1101 receipts of the taxpayer within and without this state during
1102 the taxable year. The method of calculating receipts for

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1103 purposes of the denominator is the same as the method used in
1104 determining receipts for purposes of the numerator. The receipts
1105 factor shall include only those receipts described in this
1106 subsection which constitute and are included in the computation
1107 of adjusted federal income for the taxable year.

1108 (b) Receipts from the lease of real property.—The numerator
1109 of the receipts factor includes receipts from the lease or
1110 rental of real property owned by the taxpayer if the property is
1111 located within this state or receipts from the sublease of real
1112 property if the property is located within this state.

1113 (c) Receipts from the lease of tangible personal property.—

1114 1. Except as described in subparagraph 2., the numerator of
1115 the receipts factor includes receipts from the lease or rental
1116 of tangible personal property owned by the taxpayer if the
1117 property is located within this state when it is first placed in
1118 service by the lessee.

1119 2. Receipts from the lease or rental of transportation
1120 property owned by the taxpayer are included in the numerator of
1121 the receipts factor to the extent that the property is used in
1122 this state. The extent an aircraft is deemed to be used in this
1123 state and the amount of receipts that are included in the
1124 numerator of this state's receipts factor is determined by
1125 multiplying all the receipts from the lease or rental of the
1126 aircraft by a fraction, the numerator of which is the number of
1127 landings of the aircraft in this state and the denominator of
1128 which is the total number of landings of the aircraft. If the
1129 extent of the use of any transportation property within this
1130 state cannot be determined, the property shall be deemed to be
1131 used wholly in the state in which the property has its principal

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1132 base of operations. A motor vehicle shall be deemed to be used
1133 wholly in the state in which it is registered.

1134 (d) Interest from loans secured by real property.—

1135 1. The numerator of the receipts factor includes interest
1136 and fees or penalties in the nature of interest from loans
1137 secured by real property if the property is located within this
1138 state. If the property is located both within this state and one
1139 or more other states, the receipts described in this subsection
1140 are included in the numerator of the receipts factor if more
1141 than 50 percent of the fair market value of the real property is
1142 located within this state. If more than 50 percent of the fair
1143 market value of the real property is not located within any one
1144 state, the receipts described in this subsection shall be
1145 included in the numerator of the receipts factor if the borrower
1146 is located in this state.

1147 2. The determination of whether the real property securing
1148 a loan is located within this state shall be made as of the time
1149 the original agreement was made and any and all subsequent
1150 substitutions of collateral shall be disregarded.

1151 (e) Interest from loans not secured by real property.—The
1152 numerator of the receipts factor includes interest and fees or
1153 penalties in the nature of interest from loans not secured by
1154 real property if the borrower is located in this state.

1155 (f) Net gains from the sale of loans.—The numerator of the
1156 receipts factor includes net gains from the sale of loans. Net
1157 gains from the sale of loans includes income recorded under the
1158 coupon stripping rules of s. 1286 of the Internal Revenue Code.

1159 1. The amount of net gains, but not less than zero, from
1160 the sale of loans secured by real property included in the

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1161 numerator is determined by multiplying such net gains by a
1162 fraction the numerator of which is the amount included in the
1163 numerator of the receipts factor pursuant to paragraph (d) and
1164 the denominator of which is the total amount of interest and
1165 fees or penalties in the nature of interest from loans secured
1166 by real property.

1167 2. The amount of net gains, but not less than zero, from
1168 the sale of loans not secured by real property included in the
1169 numerator is determined by multiplying such net gains by a
1170 fraction the numerator of which is the amount included in the
1171 numerator of the receipts factor pursuant to paragraph (e) and
1172 the denominator of which is the total amount of interest and
1173 fees or penalties in the nature of interest from loans not
1174 secured by real property.

1175 (g) Receipts from credit card receivables.—The numerator of
1176 the receipts factor includes interest and fees or penalties in
1177 the nature of interest from credit card receivables and receipts
1178 from fees charged to card holders, such as annual fees, if the
1179 billing address of the card holder is in this state.

1180 (h) Net gains from the sale of credit card receivables.—The
1181 numerator of the receipts factor includes net gains, but not
1182 less than zero, from the sale of credit card receivables
1183 multiplied by a fraction, the numerator of which is the amount
1184 included in the numerator of the receipts factor pursuant to
1185 paragraph (g) and the denominator of which is the taxpayer's
1186 total amount of interest and fees or penalties in the nature of
1187 interest from credit card receivables and fees charged to card
1188 holders.

1189 (i) Credit card issuer's reimbursement fees.—The numerator

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1190 of the receipts factor includes all credit card issuer's
1191 reimbursement fees multiplied by a fraction, the numerator of
1192 which is the amount included in the numerator of the receipts
1193 factor pursuant to paragraph (g) and the denominator of which is
1194 the taxpayer's total amount of interest and fees or penalties in
1195 the nature of interest from credit card receivables and fees
1196 charged to card holders.

1197 (j) Receipts from merchant discount.-The numerator of the
1198 receipts factor includes receipts from merchant discount if the
1199 commercial domicile of the merchant is in this state. Such
1200 receipts shall be computed net of any cardholder charge backs,
1201 but shall not be reduced by any interchange transaction fees or
1202 by any issuer's reimbursement fees paid to another for charges
1203 made by its card holders.

1204 (k) Loan servicing fees.-

1205 1.a. The numerator of the receipts factor includes loan
1206 servicing fees derived from loans secured by real property
1207 multiplied by a fraction the numerator of which is the amount
1208 included in the numerator of the receipts factor pursuant to
1209 paragraph (d) and the denominator of which is the total amount
1210 of interest and fees or penalties in the nature of interest from
1211 loans secured by real property.

1212 b. The numerator of the receipts factor includes loan
1213 servicing fees derived from loans not secured by real property
1214 multiplied by a fraction the numerator of which is the amount
1215 included in the numerator of the receipts factor pursuant to
1216 paragraph (e) and the denominator of which is the total amount
1217 of interest and fees or penalties in the nature of interest from
1218 loans not secured by real property.

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1219 2. In circumstances in which the taxpayer receives loan
1220 servicing fees for servicing the secured or the unsecured loans
1221 of another, the numerator of the receipts factor shall include
1222 such fees if the borrower is located in this state.

1223 (l) Receipts from services.—The numerator of the receipts
1224 factor includes receipts from services not otherwise apportioned
1225 under this subsection if the service is performed in this state.
1226 If the service is performed both within and without this state,
1227 the numerator of the receipts factor includes receipts from
1228 services not otherwise apportioned under this section, if a
1229 greater proportion of the income-producing activity is performed
1230 in this state based on cost of performance.

1231 (m) Receipts from investment assets and activities and
1232 trading assets and activities.—

1233 1. Interest, dividends, net gains, but not less than zero,
1234 and other income from investment assets and activities and from
1235 trading assets and activities shall be included in the receipts
1236 factor. Investment assets and activities and trading assets and
1237 activities include, but are not limited to: investment
1238 securities; trading account assets; federal funds; securities
1239 purchased and sold under agreements to resell or repurchase;
1240 options; futures contracts; forward contracts; notional
1241 principal contracts such as swaps; equities; and foreign
1242 currency transactions. With respect to the investment and
1243 trading assets and activities described in sub-subparagraphs a.
1244 and b., the receipts factor shall include the amounts described
1245 in such sub-subparagraphs.

1246 a. The receipts factor shall include the amount by which
1247 interest from federal funds sold and securities purchased under

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1248 resale agreements exceeds interest expense on federal funds
1249 purchased and securities sold under repurchase agreements.

1250 b. The receipts factor shall include the amount by which
1251 interest, dividends, gains, and other income from trading assets
1252 and activities, including, but not limited to, assets and
1253 activities in the matched book, in the arbitrage book, and
1254 foreign currency transactions, exceed amounts paid in lieu of
1255 interest, amounts paid in lieu of dividends, and losses from
1256 such assets and activities.

1257 2. The numerator of the receipts factor includes interest,
1258 dividends, net gains, but not less than zero, and other income
1259 from investment assets and activities and from trading assets
1260 and activities described in subparagraph 1. which are
1261 attributable to this state.

1262 a. The amount of interest, dividends, net gains, but not
1263 less than zero, and other income from investment assets and
1264 activities in the investment account to be attributed to this
1265 state and included in the numerator is determined by multiplying
1266 all such income from such assets and activities by a fraction,
1267 the numerator of which is the average value of such assets that
1268 are properly assigned to a regular place of business of the
1269 taxpayer within this state and the denominator of which is the
1270 average value of all such assets.

1271 b. The amount of interest from federal funds sold and
1272 purchased and from securities purchased under resale agreements
1273 and securities sold under repurchase agreements attributable to
1274 this state and included in the numerator is determined by
1275 multiplying the amount described in sub-subparagraph 1.a. from
1276 such funds and such securities by a fraction, the numerator of

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1277 which is the average value of federal funds sold and securities
1278 purchased under agreements to resell which are properly assigned
1279 to a regular place of business of the taxpayer within this state
1280 and the denominator of which is the average value of all such
1281 funds and such securities.

1282 c. The amount of interest, dividends, gains, and other
1283 income from trading assets and activities, including, but not
1284 limited to, assets and activities in the matched book, in the
1285 arbitrage book, and foreign currency transactions, but excluding
1286 amounts described in sub-subparagraphs a. or b., attributable to
1287 this state and included in the numerator is determined by
1288 multiplying the amount described in sub-subparagraph 1.b. by a
1289 fraction, the numerator of which is the average value of such
1290 trading assets that are properly assigned to a regular place of
1291 business of the taxpayer within this state and the denominator
1292 of which is the average value of all such assets.

1293 d. For purposes of this paragraph, average value shall be
1294 determined using the rules for determining the average value of
1295 tangible personal property set forth in paragraphs (4)(c) and
1296 (d).

1297 3. In lieu of using the method set forth in subparagraph
1298 2., the taxpayer may elect, or the department may require in
1299 order to fairly represent the business activity of the taxpayer
1300 in this state, the use of the method set forth in this
1301 subparagraph.

1302 a. The amount of interest, dividends, net gains, but not
1303 less than zero, and other income from investment assets and
1304 activities in the investment account to be attributed to this
1305 state and included in the numerator is determined by multiplying

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1306 all such income from such assets and activities by a fraction,
1307 the numerator of which is the gross income from such assets and
1308 activities that are properly assigned to a regular place of
1309 business of the taxpayer within this state and the denominator
1310 of which is the gross income from all such assets and
1311 activities.

1312 b. The amount of interest from federal funds sold and
1313 purchased and from securities purchased under resale agreements
1314 and securities sold under repurchase agreements attributable to
1315 this state and included in the numerator is determined by
1316 multiplying the amount described in sub-subparagraph 1.a. from
1317 such funds and such securities by a fraction, the numerator of
1318 which is the gross income from such funds and such securities
1319 that are properly assigned to a regular place of business of the
1320 taxpayer within this state and the denominator of which is the
1321 gross income from all such funds and such securities.

1322 c. The amount of interest, dividends, gains, and other
1323 income from trading assets and activities, including, but not
1324 limited to, assets and activities in the matched book, in the
1325 arbitrage book, and foreign currency transactions, but excluding
1326 amounts described in sub-subparagraph a. or sub-subparagraph b.,
1327 attributable to this state and included in the numerator is
1328 determined by multiplying the amount described in sub-
1329 paragraph 1.b. by a fraction, the numerator of which is the
1330 gross income from such trading assets and activities that are
1331 properly assigned to a regular place of business of the taxpayer
1332 within this state and the denominator of which is the gross
1333 income from all such assets and activities.

1334 4. If the taxpayer elects or is required by the department

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1335 to use the method set forth in subparagraph 3., it shall use
1336 this method on all subsequent returns unless the taxpayer
1337 receives prior permission from the department to use, or the
1338 department requires, a different method.

1339 5. The taxpayer has the burden of proving that an
1340 investment asset or activity or trading asset or activity was
1341 properly assigned to a regular place of business outside this
1342 state by demonstrating that the day-to-day decisions regarding
1343 the asset or activity occurred at a regular place of business
1344 outside this state. If the day-to-day decisions regarding an
1345 investment asset or activity or trading asset or activity occur
1346 at more than one regular place of business and one such regular
1347 place of business is in this state and one such regular place of
1348 business is outside this state, such asset or activity shall be
1349 considered to be located at the regular place of business of the
1350 taxpayer where the investment or trading policies or guidelines
1351 with respect to the asset or activity are established. Unless
1352 the taxpayer demonstrates to the contrary, such policies and
1353 guidelines shall be presumed to be established at the commercial
1354 domicile of the taxpayer.

1355 (n) Attribution of certain receipts to commercial
1356 domicile.—All receipts that would be assigned under this section
1357 to a state in which the taxpayer is not taxable shall be
1358 included in the numerator of the receipts factor, if the
1359 taxpayer's commercial domicile is in this state.

1360 (4) PROPERTY FACTOR.—

1361 (a) General.—The property factor is a fraction, the
1362 numerator of which is the average value of real property and
1363 tangible personal property rented to the taxpayer which is

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1364 located or used within this state during the taxable year, the
1365 average value of the taxpayer's real and tangible personal
1366 property that is owned and located or used within this state
1367 during the taxable year, and the average value of the taxpayer's
1368 loans and credit card receivables that are located within this
1369 state during the taxable year, and the denominator of which is
1370 the average value of all such property that is located or used
1371 within and without this state during the taxable year.

1372 (b) Property included.—The property factor shall include
1373 only property the income or expenses of which are included, or
1374 would have been included if not fully depreciated or expensed,
1375 or depreciated or expensed to a nominal amount, in the
1376 computation of the adjusted federal income for the taxable year.

1377 (c) Value of property owned by the taxpayer.—

1378 1. The value of real property and tangible personal
1379 property owned by the taxpayer is the original cost or other
1380 basis of such property for federal income tax purposes without
1381 regard to depletion, depreciation, or amortization.

1382 2. Loans are valued at their outstanding principal balance,
1383 without regard to any reserve for bad debts. If a loan is
1384 charged off in whole or in part for federal income tax purposes,
1385 the portion of the loan charged off is not outstanding. A
1386 specifically allocated reserve established pursuant to
1387 regulatory or financial accounting guidelines which is treated
1388 as charged off for federal income tax purposes shall be treated
1389 as charged off for purposes of this section.

1390 3. Credit card receivables are valued at their outstanding
1391 principal balance, without regard to any reserve for bad debts.
1392 If a credit card receivable is charged off in whole or in part

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1393 for federal income tax purposes, the portion of the receivable
1394 charged off is not outstanding.

1395 (d) Average value of property owned by the taxpayer.—The
1396 average value of property owned by the taxpayer is computed on
1397 an annual basis by adding the value of the property on the first
1398 day of the taxable year and the value on the last day of the
1399 taxable year and dividing the sum by two. If averaging on this
1400 basis does not properly reflect average value, the department
1401 may require averaging on a more frequent basis. The taxpayer may
1402 elect to average on a more frequent basis. When averaging on a
1403 more frequent basis is required by the department or is elected
1404 by the taxpayer, the same method of valuation must be used
1405 consistently by the taxpayer with respect to property within and
1406 without this state and on all subsequent returns unless the
1407 taxpayer receives prior permission from the department or the
1408 department requires a different method of determining average
1409 value.

1410 (e) Average value of real property and tangible personal
1411 property rented to the taxpayer.—

1412 1. The average value of real property and tangible personal
1413 property that the taxpayer has rented from another and that is
1414 not treated as property owned by the taxpayer for federal income
1415 tax purposes shall be determined annually by multiplying the
1416 gross rents payable during the taxable year by eight.

1417 2. If the use of the general method described in this
1418 subsection results in inaccurate valuations of rented property,
1419 any other method that properly reflects the value may be adopted
1420 by the department or by the taxpayer when approved in writing by
1421 the department. Once approved, such other method of valuation

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1422 must be used on all subsequent returns unless the taxpayer
1423 receives prior approval from the department or the department
1424 requires a different method of valuation.

1425 (f) Location of real property and tangible personal
1426 property owned by or rented to the taxpayer.-

1427 1. Except as described in subparagraph 2., real property
1428 and tangible personal property owned by or rented to the
1429 taxpayer is considered to be located within this state if it is
1430 physically located, situated, or used within this state.

1431 2. Transportation property is included in the numerator of
1432 the property factor to the extent that the property is used in
1433 this state. The extent an aircraft is deemed to be used in this
1434 state and the amount of value that is included in the numerator
1435 of this state's property factor is determined by multiplying the
1436 average value of the aircraft by a fraction, the numerator of
1437 which is the number of landings of the aircraft in this state
1438 and the denominator of which is the total number of landings of
1439 the aircraft everywhere. If the extent of the use of any
1440 transportation property within this state cannot be determined,
1441 the property shall be deemed to be used wholly in the state in
1442 which the property has its principal base of operations. A motor
1443 vehicle shall be deemed to be used wholly in the state in which
1444 it is registered.

1445 (g) Location of loans.-

1446 1.a. A loan is considered to be located within this state
1447 if it is properly assigned to a regular place of business of the
1448 taxpayer within this state.

1449 b. A loan is properly assigned to the regular place of
1450 business with which it has a preponderance of substantive

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1451 contacts. A loan assigned by the taxpayer to a regular place of
1452 business without the state shall be presumed to have been
1453 properly assigned if:

1454 (I) The taxpayer has assigned, in the regular course of its
1455 business, such loan on its records to a regular place of
1456 business consistent with federal or state regulatory
1457 requirements;

1458 (II) Such assignment on its records is based upon
1459 substantive contacts of the loan to such regular place of
1460 business; and

1461 (III) The taxpayer uses said records reflecting assignment
1462 of loans for the filing of all state and local tax returns for
1463 which an assignment of loans to a regular place of business is
1464 required.

1465 c. The presumption of proper assignment of a loan provided
1466 in sub-subparagraph b. may be rebutted upon a showing by the
1467 department, supported by a preponderance of the evidence, that
1468 the preponderance of substantive contacts regarding such loan
1469 did not occur at the regular place of business to which it was
1470 assigned on the taxpayer's records. When such presumption has
1471 been rebutted, the loan shall be located within this state if:

1472 (I) The taxpayer had a regular place of business within
1473 this state at the time the loan was made; and

1474 (II) The taxpayer fails to show, by a preponderance of the
1475 evidence, that the preponderance of substantive contacts
1476 regarding such loan did not occur within this state.

1477 2. In the case of a loan that is assigned by the taxpayer
1478 to a place without this state which is not a regular place of
1479 business, it shall be presumed, subject to rebuttal by the

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1480 taxpayer on a showing supported by the preponderance of
1481 evidence, that the preponderance of substantive contacts
1482 regarding the loan occurred within this state if, at the time
1483 the loan was made the taxpayer's commercial domicile, as defined
1484 by paragraph (2) (c), was within this state.

1485 3. To determine the state in which the preponderance of
1486 substantive contacts relating to a loan have occurred, the facts
1487 and circumstances regarding the loan at issue shall be reviewed
1488 on a case-by-case basis and consideration shall be given to such
1489 activities as the solicitation, investigation, negotiation,
1490 approval, and administration of the loan. The terms
1491 "solicitation," "investigation," "negotiation," "approval," and
1492 "administration" are defined as follows:

1493 a. Solicitation is either active or passive. Active
1494 solicitation occurs when an employee of the taxpayer initiates
1495 the contact with the customer. Such activity is located at the
1496 regular place of business that the taxpayer's employee is
1497 regularly connected with or working out of, regardless of where
1498 the services of such employee were actually performed. Passive
1499 solicitation occurs when the customer initiates the contact with
1500 the taxpayer. If the customer's initial contact was not at a
1501 regular place of business of the taxpayer, the regular place of
1502 business, if any, where the passive solicitation occurred is
1503 determined by the facts in each case.

1504 b. Investigation is the procedure whereby employees of the
1505 taxpayer determine the credit worthiness of the customer, as
1506 well as the degree of risk involved in making a particular
1507 agreement. Such activity is located at the regular place of
1508 business that the taxpayer's employees are regularly connected

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1509 with or working out of, regardless of where the services of such
1510 employees were actually performed.

1511 c. Negotiation is the procedure whereby employees of the
1512 taxpayer and its customer determine the terms of the agreement,
1513 such as the amount, duration, interest rate, frequency of
1514 repayment, currency denomination, and security required. Such
1515 activity is located at the regular place of business that the
1516 taxpayer's employees are regularly connected with or working out
1517 of, regardless of where the services of such employees were
1518 actually performed.

1519 d. Approval is the procedure whereby employees or the board
1520 of directors of the taxpayer make the final determination
1521 whether to enter into the agreement. Such activity is located at
1522 the regular place of business that the taxpayer's employees are
1523 regularly connected with or working out of, regardless of where
1524 the services of such employees were actually performed. If the
1525 board of directors makes the final determination, such activity
1526 is located at the commercial domicile of the taxpayer.

1527 e. Administration is the process of managing the account.
1528 This process includes bookkeeping, collecting the payments,
1529 corresponding with the customer, reporting to management
1530 regarding the status of the agreement, and proceeding against
1531 the borrower or the security interest if the borrower is in
1532 default. Such activity is located at the regular place of
1533 business that oversees this activity.

1534 (h) Location of credit card receivables.—For purposes of
1535 determining the location of credit card receivables, credit card
1536 receivables shall be treated as loans and are subject to the
1537 provisions of paragraph (g).

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1538 (i) Period for which properly assigned loan remains
1539 assigned.—A loan that has been properly assigned to a state
1540 shall, absent any change of material fact, remain assigned to
1541 the state for the length of the original term of the loan.
1542 Thereafter, the loan may be properly assigned to another state
1543 if the loan has a preponderance of substantive contact to a
1544 regular place of business there.

1545 (5) PAYROLL FACTOR.—

1546 (a) General.—The payroll factor is a fraction, the
1547 numerator of which is the total amount paid in this state during
1548 the taxable year by the taxpayer for compensation and the
1549 denominator of which is the total compensation paid both within
1550 and without this state during the taxable year. The payroll
1551 factor shall include only that compensation included in the
1552 computation of adjusted federal income for the taxable year.

1553 (b) Compensation relating to nonbusiness income and
1554 independent contractors.—The compensation of any employee for
1555 services or activities that are connected with the production of
1556 nonbusiness income, or income that is not includable in adjusted
1557 federal income, and payments made to any independent contractor
1558 or any other person not properly classifiable as an employee
1559 shall be excluded from both the numerator and denominator of the
1560 factor.

1561 (c) When compensation is paid in this state.—Compensation
1562 is paid in this state if any one of the following tests, applied
1563 consecutively, is met:

1564 1. The employee's services are performed entirely within
1565 this state.

1566 2. The employee's services are performed both within and

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1567 without the state, but the service performed without the state
1568 is incidental to the employee's service within the state. The
1569 term "incidental" means any service that is temporary or
1570 transitory in nature or that is rendered in connection with an
1571 isolated transaction.

1572 3. If the employee's services are performed both within and
1573 without this state, the employee's compensation shall be
1574 attributed to this state:

1575 a. If the employee's principal base of operations is within
1576 this state;

1577 b. If there is no principal base of operations in any state
1578 in which some part of the services are performed, but the place
1579 from which the services are directed or controlled is in this
1580 state; or

1581 c. If the principal base of operations and the place from
1582 which the services are directed or controlled are not in any
1583 state in which some part of the service is performed but the
1584 employee's residence is in this state.

1585 Section 12. Subsections (2) and (3) of section 220.151,
1586 Florida Statutes, are amended to read:

1587 220.151 Apportionment; methods for special industries.—

1588 (2) The tax base for a taxpayer furnishing transportation
1589 services other than by air, for the purpose of computing a tax
1590 on those activities, shall be apportioned to this state by
1591 multiplying such base by a fraction the numerator of which is
1592 the revenue miles of the taxpayer in this state and the
1593 denominator of which is the revenue miles of the taxpayer
1594 everywhere. The term "revenue miles in this state" also includes
1595 all miles traversed between points in this state, even though

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1596 the route of travel is not wholly over the land mass of the
1597 state.

1598 (a) For transportation other than by pipeline or by air, a
1599 revenue mile is the transportation of one passenger or 1 net ton
1600 of freight the distance of 1 mile for a consideration. When a
1601 taxpayer is engaged in the transportation of both passengers and
1602 freight, the fraction shall be determined by means of an average
1603 of the passenger revenue mile fraction and the freight revenue
1604 mile fraction, weighted to reflect the taxpayer's relative
1605 railway operating income from total passenger and total freight
1606 service as reported to the United States Department of
1607 Transportation Interstate Commerce Commission, in the case of
1608 transportation by railroad, or weighted to reflect the
1609 taxpayer's relative gross receipts from passenger and freight
1610 transportation, in case of transportation other than by
1611 railroad.

1612 (b) For transportation by pipeline, a revenue mile is the
1613 transportation by pipeline of 1 barrel of oil, 1,000 cubic feet
1614 of gas, or any specified quantity of any other substance the
1615 distance of 1 mile for a consideration.

1616 (c) The tax base for a taxpayer furnishing transportation
1617 services by air, for purposes of computing a tax on those
1618 activities, shall be apportioned to this state by multiplying
1619 such base by a fraction the numerator of which is the number of
1620 takeoffs and landings in this state and the denominator is the
1621 number of takeoffs and landings everywhere. ~~For purposes of~~
1622 ~~paragraph (a), in computing the revenue miles of any taxpayer~~
1623 ~~engaged in furnishing air or sea transportation services, the~~
1624 ~~"revenue miles in this state" shall include all miles traversed~~

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1625 ~~within the area bounded on the west by the meridian of longitude~~
1626 ~~87°30' west from Greenwich, bounded on the north by the northern~~
1627 ~~land border of this state or the parallel of latitude 31° north~~
1628 ~~from the equator, bounded on the east by the meridian of~~
1629 ~~longitude 80° west from Greenwich, and bounded on the south by~~
1630 ~~the parallel of latitude 23°30' north from the equator as the~~
1631 ~~case may be. The "revenue miles in this state" shall also~~
1632 ~~include all miles traversed between points in this state, even~~
1633 ~~though the route of travel is not wholly over the land mass of~~
1634 ~~the state. The department may prescribe standard mileage tables~~
1635 ~~for the purpose of determining revenue miles in the state under~~
1636 ~~this paragraph, rather than requiring taxpayers to compute from~~
1637 ~~their records the actual number of miles traversed within such~~
1638 ~~boundaries or points from time to time.~~

1639 (d) For taxpayers furnishing transportation services by
1640 sea, revenue miles within this state shall be miles traversed
1641 within the constitutional boundaries of Florida.

1642 (e) For purposes of this subsection, revenue miles not
1643 allocable or apportionable to any taxing jurisdiction, otherwise
1644 known as "nowhere miles," are eliminated from both the numerator
1645 and denominator of the apportionment computation.

1646 (f)-(d) For purposes of this subsection, the term "taxpayer
1647 furnishing transportation services" includes taxpayers engaged
1648 exclusively in interstate commerce.

1649 (3) For any taxable year beginning on or after January 1,
1650 1999, a citrus processing company may, if required to apportion
1651 its taxable net income pursuant to the three-factor
1652 apportionment method set forth in s. 220.15(1), elect to have
1653 such apportionment determined for that taxable year solely by

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1654 use of the sales factor, as set forth in s. 220.15(4) ~~s.~~
1655 ~~220.15(5)~~. The election shall be made by the filing of a return
1656 for the taxable year utilizing this method.

1657 Section 13. Section 220.152, Florida Statutes, is amended
1658 to read:

1659 220.152 Apportionment; other methods.—If the apportionment
1660 methods of ss. 220.15, 220.1505, and 220.151 do not fairly
1661 represent the extent of a taxpayer's tax base attributable to
1662 this state, the taxpayer may petition for, or the department may
1663 require, in respect to all or any part of the taxpayer's tax
1664 base, if reasonable:

1665 (1) Separate accounting;

1666 (2) The exclusion of any one or more factors;

1667 (3) The inclusion of one or more additional factors which
1668 will fairly represent the taxpayer's tax base attributable to
1669 this state; or

1670 (4) The employment of any other method which will produce
1671 an equitable apportionment.

1672 Section 14. Section 213.054, Florida Statutes, is repealed.

1673 Section 15. Subsections (3) and (5) of section 220.62,
1674 Florida Statutes, are repealed.

1675 Section 16. Subsection (5) of section 220.63, Florida
1676 Statutes, is repealed.

1677 Section 17. Section 220.64, Florida Statutes, is amended to
1678 read:

1679 220.64 Other provisions applicable to franchise tax.—To the
1680 extent that they are not manifestly incompatible with the
1681 provisions of this part, parts I, III, IV, V, VI, VIII, IX, and
1682 X of this code and ss. 220.12, 220.13, 220.15, 220.1505, and

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1683 220.16 apply to the franchise tax imposed by this part. Under
1684 rules prescribed in s. 220.131, a consolidated return may be
1685 filed by any affiliated group of corporations composed of one or
1686 more banks or savings associations, its or their Florida parent
1687 corporation, and any nonbank or nonsavings subsidiaries of such
1688 parent corporation.

1689 Section 18. Section 220.51, Florida Statutes, is amended to
1690 read:

1691 220.51 Promulgation of rules and regulations.—

1692 (1) In accordance with the Administrative Procedure Act,
1693 chapter 120, the department is authorized to make, promulgate,
1694 and enforce such reasonable rules and regulations, and to
1695 prescribe such forms relating to the administration and
1696 enforcement of the provisions of this code, as it may deem
1697 appropriate, including:

1698 (a)~~(1)~~ Rules for initial implementation of this code and
1699 for taxpayers' transitional taxable years commencing before and
1700 ending after January 1, 1972;

1701 (b)~~(2)~~ Rules or regulations to clarify whether certain
1702 groups, organizations, or associations formed under the laws of
1703 this state or any other state, country, or jurisdiction shall be
1704 deemed "taxpayers" for the purposes of this code, in accordance
1705 with the legislative declarations of intent in s. 220.02; and

1706 (c)~~(3)~~ Regulations relating to consolidated reporting for
1707 affiliated groups of corporations, in order to provide for an
1708 equitable and just administration of this code with respect to
1709 multicorporate taxpayers.

1710 (2) The department may adopt rules pursuant to ss.
1711 120.536(1) and 120.54 to administer this chapter, including

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1712 rules interpreting each definition used in this chapter and
1713 rules for interpreting the reasonable attribution of intangible
1714 property to income-producing activity.

1715 Section 19. (1) It is the intent of the Legislature to
1716 require all corporations filing Florida nexus group corporate
1717 income tax returns to either file separate Florida income tax
1718 returns or to make an election to file a consolidated Florida
1719 income tax returns composed of the identical component members
1720 to those that have consolidated their taxable incomes for
1721 federal income tax purposes.

1722 (2) It is further the intent of the Legislature to clarify
1723 that the amendments to ss. 220.23 and 220.809, Florida Statutes,
1724 made by sections 44 and 45 of chapter 2002-218, Laws of Florida,
1725 were intended to apply to all notifications of adjustments
1726 required to be reported on or after January 1, 2003, by s.
1727 220.23, Florida Statutes, and that those amendments were
1728 intended to apply retroactively to all tax years represented by
1729 such notifications and returns, including tax years prior to
1730 January 1, 2003. It is the intent of the Legislature that this
1731 clarification applies retroactively to January 1, 2003, and
1732 applies retroactively to all returns and notices required to be
1733 filed under s. 220.23, Florida Statutes, on or after January 1,
1734 2003.

1735 (3) It is further the intent of the Legislature that the
1736 amendments made by sections 5, 6, and 7 of this act to ss.
1737 220.02(1), 220.03(1)(e) and (6), and 220.13(1)(a), Florida
1738 Statutes, are remedial in nature and apply retroactively to tax
1739 years beginning after December 31, 2000.

1740 Section 20. This act shall take effect upon becoming a law,

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1741 and applies to tax years ending on or after December 31, 2009,
1742 except as otherwise expressly provided in section 19 of this
1743 act.