HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 608

RELATING TO: Corporate Income tax

SPONSOR(S): Senate Committee on Ways & Means & Senator Ostalkiewicz

COMPANION BILL(S): HB 4413 (c); SB 704 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) WAYS AND MEANS YEAS 28 NAYS 0
(2)
(3)
(4)
(5)

I. FINAL ACTION STATUS:

The Senate passed CS/SB 608 by a vote of 33-0 on April 22, 1998. The House passed CS/SB 608 by a vote of 119-0 on April 29, 1998. It became law without the Governor's signature on May 22, 1998: Chapter 98-100, Laws of Florida.

II. SUMMARY:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and uses the federal taxable income amount as the tax base for the Florida income tax.

Effective January 1, 1997, s. 1361 of the Internal Revenue Code was amended to permit an S corporation to own more than 80 percent of another corporation, which is known as a qualified subchapter S subsidiary. The S corporation could make an election under s. 1361(a)(3), and its subsidiary would not be treated as a separate corporation for federal tax purposes.

In Florida, subchapter S corporations are not subject to the Florida corporate income tax. Wholly-owned subsidiaries of qualified subchapter S corporations, however, are generally subject to the Florida corporate income tax liability.

Provided that an S corporation makes the proper election under federal law so that its subsidiary would not be treated as a separate corporation for federal tax purposes, CS/SB 608 would provide that these qualified subchapter S subsidiaries would not be treated as separate entities from their parent corporations for purposes of payment of the Florida corporate income tax. This provision would be made effective with respect to tax years beginning on or after January 1, 1997.

The fiscal impact of this bill is estimated at a negative ($300,000) for fiscal year 1998-1999, and thereafter.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and using the federal taxable income amount as the tax base for the Florida income tax.

Effective January 1, 1997, s. 1361 of the Internal Revenue Code was amended to permit an S corporation to own more than 80 percent of another corporation, which is known as a qualified subchapter S subsidiary. In completing its federal corporate income tax forms, the S corporation could make an election under s. 1361(a)(3) of the IRS Code, and its subsidiary would not be treated as a separate corporation for federal tax purposes.

In Florida, subchapter S corporations are not subject to the Florida corporate income tax. Wholly-owned subsidiaries of qualified subchapter S corporations, however, are generally subject to the Florida corporate income tax liability.

B. EFFECT OF PROPOSED CHANGES:

Provided that an S corporation makes the proper election under federal law so that its subsidiary would not be treated as a separate corporation for federal tax purposes, these qualified subchapter S subsidiaries would not be treated as separate entities from their parent corporations for purposes of payment of the Florida corporate income tax. This provision would be made effective with respect to tax years beginning on or after January 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

Yes. Provided that an S corporation makes the proper election under federal law so that its subsidiary would not be treated as a separate corporation for federal tax purposes, these qualified subchapter S subsidiaries would not be treated as separate entities from their parent corporations for purposes of payment of the Florida corporate income tax.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. <u>Personal Responsibility:</u>

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 220.02, 220.03, and 220.22., F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 220.03, F.S., changing the reference date for the Internal Revenue Code to reflect changes made to the Code in effect as of January 1, 1998.

Section 2. Amends s. 220.02, F.S., providing that qualified subchapter S subsidiaries shall not be treated as separate entities from their parent corporations for purposes of the Florida corporate income tax.

Section 3. Amends s. 220.22, F.S., requiring that for the year in which an election is made to file as a qualified subchapter S subsidiary under s. 1361 (b) (3) of the IRS Code, the qualified subchapter S subsidiary would be required to file an informational return with the Department of Revenue.

Section 4. Provides that sections 2 and 3 of the bill are intended to clarify legislative intent under existing law and that such sections are effective with respect for tax years beginning on or after January 1, 1997.

Section 5. Provides the act shall take effect upon becoming a law and, except as otherwise provided, shall operate retroactively to January 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

The bill would eliminate all tax revenues generated in Florida by qualified subchapter S corporation subsidiaries.

	FY 1997-98	FY 1998-99
General Revenue Fund	($0.3 M)	($0.3 M)

3. Long Run Effects Other Than Normal Growth:

See, III. A. 2., above.

4. Total Revenues and Expenditures:

See, III. A. 2., above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None

2. Direct Private Sector Benefits:

   Provided that the S corporation made the proper election under federal law, their qualified subchapter S subsidiaries would not be subject to Florida corporate income tax, and this elimination of the corporate income tax for qualified subchapter S subsidiaries would be effective with respect for tax years beginning on or after January 1, 1997.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

None

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill differs from CS/SB 608 in the following manner:

The CS version of the bill added the provisions that: (a) provided that qualified subchapter S subsidiaries shall not be treated as separate entities from their parent corporations for purposes of the Florida corporate income tax; (b) required that for the year in which an election is made to file as a qualified subchapter S subsidiary under s. 1361 (b) (3) of the IRS Code, the qualified subchapter S subsidiary would be required to file an informational return with the Department of Revenue; and, (c) provided that (a) and (b) would be effective with respect for tax years beginning on or after January 1, 1997.

The original bill simply provided a change in the reference to the IRS Code in Florida Statutes so that corporations which are subject to the Florida corporate income tax would be permitted to base their calculations on current (1998) IRS rules.

VIII. SIGNATURES:

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
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