

By the Committee on Ways and Means and Senators Bankhead, Lee, Clary, Hargrett, Sullivan, McKay, Crist and Cowin

301-1913-98

1 A bill to be entitled
2 An act relating to intangible personal property
3 taxes; amending s. 199.023, F.S.; defining the
4 terms "ministerial function" and "processing
5 activity" for purposes of ch. 199, F.S.;
6 amending s. 199.052, F.S.; increasing the
7 minimum amount of annual intangible personal
8 property tax which a person may be required to
9 pay; repealing s. 199.052(11), F.S., relating
10 to returns filed by banking organizations, to
11 conform; amending s. 199.175, F.S., relating to
12 taxable situs; conforming provisions; amending
13 s. 199.185, F.S.; revising the exemption from
14 intangible personal property taxes for certain
15 property held in trust; revising the exemption
16 for real estate mortgage investment conduits;
17 partially exempting accounts receivable arising
18 out of a trade or business from intangible
19 personal property taxes; providing legislative
20 intent to fully exempt such assets in
21 subsequent years; providing a full, rather than
22 partial, exemption from the annual tax for
23 banks and savings associations and providing
24 for application of the exemption to
25 organizations defined by s. 220.62(1), (2),
26 (3), and (4), F.S.; exempting insurers from the
27 annual tax; repealing s. 199.104, F.S., which
28 provides a credit against the annual tax for
29 banks and savings associations; repealing s.
30 220.68, F.S., which provides a credit against
31 the franchise tax imposed on banks and savings

1 associations based on intangible tax paid;
2 amending s. 199.282, F.S.; revising the penalty
3 for late filing of an annual intangible tax
4 return; providing a limitation on combined
5 delinquency and late filing penalties; revising
6 the penalty for omitting or undervaluing
7 property on an annual return; amending s.
8 199.292, F.S.; revising the distribution of
9 intangible tax revenues; amending s. 220.02,
10 F.S., relating to order of credits against the
11 corporate income tax or franchise tax, and s.
12 624.509, F.S., relating to the insurance
13 premium tax; conforming provisions; providing
14 application; providing effective dates.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (13) and (14) are added to
19 section 199.023, Florida Statutes, to read:

20 199.023 Definitions.--As used in this chapter:

21 (13) "Ministerial function" means an act the
22 performance of which does not involve the use of discretion or
23 judgment.

24 (14) "Processing activity" means an activity
25 undertaken to administer or service intangible personal
26 property in accordance with such terms, guidelines, criteria,
27 or directions as are provided solely by the owner of the
28 property. Methods, systems, or techniques chosen by the
29 processor to implement such terms, guidelines, criteria, or
30 directions are not considered the exercise of management or
31 control.

1 Section 2. Subsection (2) of section 199.052, Florida
2 Statutes, is amended to read:

3 199.052 Annual tax returns; payment of annual tax.--

4 (2) No person shall be required to pay the annual tax
5 in any year when the aggregate annual tax upon the person's
6 intangible personal property, after exemptions, would be less
7 than \$60~~\$5~~. In such case, an annual return is not required
8 unless the taxpayer is a corporation, a banking organization
9 claiming the exemption provided in s. 199.185(1)(i), or an
10 agent or fiduciary of whom the department requires an
11 informational return. Agents and fiduciaries shall report for
12 each person for whom they hold intangible personal property if
13 the aggregate annual tax on such person is \$60 or more ~~than~~
14 ~~\$5~~.

15 Section 3. Effective July 1, 2000, subsection (11) of
16 section 199.052, Florida Statutes, is repealed, and subsection
17 (2) of that section, as amended by this act, is amended to
18 read:

19 199.052 Annual tax returns; payment of annual tax.--

20 (2) No person shall be required to pay the annual tax
21 in any year when the aggregate annual tax upon the person's
22 intangible personal property, after exemptions, would be less
23 than \$60. In such case, an annual return is not required
24 unless the taxpayer is a corporation, ~~a banking organization~~
25 ~~claiming the exemption provided in s. 199.185(1)(i),~~ or an
26 agent or fiduciary of whom the department requires an
27 informational return. Agents and fiduciaries shall report for
28 each person for whom they hold intangible personal property if
29 the aggregate annual tax on such person is \$60 or more.

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1 Section 4. Effective July 1, 2000, paragraph (a) of
2 subsection (1) and paragraph (b) of subsection (2) of section
3 199.175, Florida Statutes, are amended to read:

4 199.175 Taxable situs.--For purposes of the annual tax
5 imposed under this chapter:

6 (1) Intangible personal property shall have a taxable
7 situs in this state when it is owned, managed, or controlled
8 by any person domiciled in this state on January 1 of the tax
9 year. Such intangibles shall be subject to annual taxation
10 under this chapter, unless the person who owns, manages, or
11 controls them is specifically exempt or unless the property is
12 specifically exempt. This provision shall apply regardless of
13 where the evidence of the intangible property is kept; where
14 the intangible is created, approved, or paid; or where
15 business may be conducted from which the intangible arises.
16 The fact that a Florida corporation owns the stock of an
17 out-of-state corporation and manages and controls such
18 corporation from a location in this state shall not operate to
19 give a taxable situs in this state to the intangibles owned by
20 the out-of-state corporation, which intangibles arise out of
21 business transacted outside this state.

22 (a) For the purposes of this chapter, "any person
23 domiciled in this state" means:

24 1. Any natural person who is a legal resident of this
25 state;

26 2. Any ~~bank or financial institution,~~business,
27 business trust as described in chapter 609, company,
28 corporation, ~~insurance company,~~partnership, or other
29 artificial entity organized or created under the law of this
30 state, except a trust; or

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1 3. Any person, including a trust, who has established
2 a commercial domicile in this state.

3 (2) Intangible personal property shall have a taxable
4 situs in this state when it is deemed to have a business situs
5 in this state and it is owned, managed, or controlled by a
6 person transacting business in this state, even though the
7 owner may claim a domicile elsewhere. This provision shall
8 apply regardless of where the evidence of the intangible is
9 kept or where the intangible is created, approved, or paid.

10 (b) Notwithstanding the provisions of this subsection:

11 1.a. Intangibles that are credit card or charge card
12 receivables or related lines of credit or loans shall be
13 deemed to have business situs in this state only when the debt
14 represented by such intangibles is owed by a customer who is
15 domiciled in this state.

16 b. The performance of ministerial functions relating
17 to, or the processing of, credit card or charge card
18 receivables in this state for the owner of such receivables is
19 not sufficient to support a finding that the owner is
20 transacting business in this state.

21 c. The term "credit card or charge card receivables"
22 does not include trade or service receivables as defined in s.
23 864 of the Internal Revenue Code of 1986, as amended.

24 2. An intangible owned by a real estate mortgage
25 investment conduit, a real estate investment trust, or a
26 regulated investment company, as those terms are defined in
27 the United States Internal Revenue Code of 1986, as amended,
28 shall not be deemed to have a taxable situs in this state
29 unless such entity has its legal or commercial domicile in
30 this state.

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1 3. The ownership of any interest in a participation or
2 syndication loan or pool of loans, notes, or receivables shall
3 not be sufficient to support a finding that the owner of such
4 interest is transacting business in this state. For the
5 purposes of this subparagraph, a participation or syndication
6 loan is a loan in which more than one lender is a creditor to
7 a common borrower, and a participation or syndication interest
8 in a pool of loans, notes, or receivables is an interest
9 acquired from the originator or initial creditor with respect
10 to the loans, notes, or receivables constituting the pool.

11 ~~4. Assets owned by a foreign insurance company, as~~
12 ~~defined in s. 624.06, shall not be deemed to have a business~~
13 ~~situs in this state if they are managed and controlled outside~~
14 ~~this state.~~

15 Section 5. Subsections (1) and (5) of section 199.185,
16 Florida Statutes, are amended, and subsection (8) is added to
17 that section, to read:

18 199.185 Property exempted from annual and nonrecurring
19 taxes.--

20 (1) The following intangible personal property shall
21 be exempt from the annual and nonrecurring taxes imposed by
22 this chapter:

23 (a) Money.

24 (b) Franchises.

25 (c) Any interest as a partner in a partnership, either
26 general or limited, other than any interest as a limited
27 partner in a limited partnership registered with the
28 Securities and Exchange Commission pursuant to the Securities
29 Act of 1933, as amended.

30 (d) Notes, bonds, and other obligations issued by the
31 State of Florida or its municipalities, counties, and other

1 taxing districts, or by the United States Government and its
2 agencies.

3 (e) Intangible personal property held in trust
4 pursuant to any stock bonus, pension, or profit-sharing plan
5 or any individual retirement account which is qualified under
6 s. 530, s. 401, or s. 408, or s. 408A of the United States
7 Internal Revenue Code, 26 U.S.C. ss. 530, 401, and 408, and
8 408A, as amended.

9 (f) Intangible personal property held under a
10 retirement plan of a Florida-based corporation exempt from
11 federal income tax under s. 501(c)(6) of the United States
12 Internal Revenue Code, 26 U.S.C., if the primary purpose of
13 the corporation is to support the promotion of professional
14 sports and the retirement plan is either a qualified plan
15 under s. 457 of the United States Internal Revenue Code or the
16 contributions to the plan, pursuant to a ruling by the United
17 States Internal Revenue Service, are not taxable to plan
18 participants until actual receipt or withdrawal by the
19 participant.

20 (g) Notes and other obligations, except bonds, to the
21 extent that such notes and obligations are secured by
22 mortgage, deed of trust, or other lien upon real property
23 situated outside the state.

24 (h) The assets of a corporation registered under the
25 Investment Company Act of 1940, 15 U.S.C. s. 80a-1-52, as
26 amended.

27 (i) All intangible personal property issued in or
28 arising out of any international banking transaction and owned
29 by a banking organization.

30 (j) Units of a unit investment trust organized under
31 an agreement or declaration of trust and registered under the

1 Investment Company Act of 1940, as amended, whose portfolio of
2 assets consists solely of assets exempt under this section.

3 (k) Interests in real estate securitizations,
4 including, but not limited to, real estate mortgage investment
5 conduits (REMIC) and financial asset securitization trusts
6 (FASITS), which ~~that~~ are directly or indirectly secured by or
7 payable from notes and obligations that are in turn secured
8 solely by a mortgage, deed of trust, or other lien upon real
9 property situated in or outside of the state, including, but
10 not limited to, mortgage pools, participations, and
11 derivatives and are held as investments by banks or savings
12 associations in compliance with regulatory agency guidelines.

13 (l) One-third of the accounts receivable arising or
14 acquired in the ordinary course of a trade or business which
15 are owned, controlled, or managed by a taxpayer on January 1,
16 1999, and thereafter. It is the intent of the Legislature
17 that, pursuant to future legislative action, the portion of
18 such accounts receivable exempt from taxation be increased to
19 two-thirds for taxes levied on January 1, 2000, and further
20 increased to all such accounts receivable on January 1, 2001,
21 and thereafter. This exemption does not apply to accounts
22 receivable which arise outside the taxpayer's ordinary course
23 of trade or business. For the purposes of this chapter, the
24 term "accounts receivable" means a business debt that is owed
25 by another to the taxpayer or the taxpayer's assignor in the
26 ordinary course of trade or business and is not supported by
27 negotiable instruments. Accounts receivable include, but are
28 not limited to, credit card receivables, charge card
29 receivables, credit receivables, margin receivables, inventory
30 or other floor plan financing, lease payments past due,
31 conditional sales contracts, retail installment sales

1 agreements, financing lease contracts, and a claim against a
2 debtor usually arising from sales or services rendered and
3 which is not necessarily due or past due. The examples
4 specified in this paragraph shall be deemed not to be
5 supported by negotiable instruments. The term "negotiable
6 instrument" means a written document that is legally capable
7 of being transferred by indorsement or delivery. The term
8 "indorsement" means the act of a payee or holder in writing
9 his or her name on the back of an instrument without further
10 qualifying words other than "pay to the order of" or "pay to"
11 whereby the property is assigned and transferred to another.

12 (5) Those organizations ~~Every bank and savings~~
13 ~~association, as defined in s. 220.62(1), (2), (3), or (4) are,~~
14 ~~is~~ exempt from ~~5 mill of~~ the tax imposed by s. 199.032.

15 (8) Every insurer, as defined in s. 624.03, whether
16 the insurer is authorized or unauthorized as defined in s.
17 624.09, is exempt from the tax imposed by s. 199.032.

18 Section 6. The amendment to subsection (5) and the
19 creation of subsection (8) of section 199.185, Florida
20 Statutes, by this section shall apply to taxes due on or after
21 July 1, 1999.

22 Section 7. Effective July 1, 2000, paragraph (k) of
23 subsection (1) of section 199.185, Florida Statutes, as
24 amended by this act is amended to read:

25 199.185 Property exempted from annual and nonrecurring
26 taxes.--

27 (1) The following intangible personal property shall
28 be exempt from the annual and nonrecurring taxes imposed by
29 this chapter:

30 (k) Interests in real estate securitizations,
31 including, but not limited to real estate mortgage investment

1 conduits (REMIC) and financial asset securitization trusts
2 (FASITS), which are directly or indirectly secured by or
3 payable from notes and obligations that are in turn secured
4 solely by a mortgage, deed of trust, or other lien upon real
5 property situated outside the state, including, but not
6 limited to, mortgage pools, participations, and derivatives
7 ~~and are held as investments by banks or savings associations~~
8 ~~in compliance with regulatory agency guidelines.~~

9 Section 8. Effective for tax years beginning after
10 December 31, 1999, sections 199.104 and 220.68, Florida
11 Statutes, are repealed.

12 Section 9. Subsections (3) and (4) of section 199.282,
13 Florida Statutes, are amended to read:

14 199.282 Penalties for violation of this chapter.--

15 (3)(a) If any annual or nonrecurring tax is not paid
16 by the due date, a delinquency penalty shall be charged. The
17 delinquency penalty shall be 10 percent of the delinquent tax
18 for each calendar month or portion thereof from the due date
19 until paid, up to a limit of 50 percent of the total tax not
20 timely paid.

21 (b) If any annual tax return required by this chapter
22 is not filed by the due date, a penalty of 10 ~~30~~ percent of
23 the tax due with the return shall be charged for each calendar
24 month or portion thereof during which the return remains
25 unfiled, up to a limit of 50 percent of the total tax due for
26 ~~each year or portion of the year during which the return~~
27 ~~remains unfiled.~~

28
29 For any penalty assessed under this subsection, the combined
30 total for all penalties assessed under paragraphs (a) and (b)
31

1 shall not exceed 10 percent per calendar month, up to a limit
2 of 50 percent of the total tax due.

3 (4) If an annual tax return is filed and property is
4 either omitted from it or undervalued, then a specific penalty
5 shall be charged. The specific penalty shall be 10 ~~30~~ percent
6 of the tax attributable to each omitted item or to each
7 undervaluation. No delinquency or late filing penalty shall be
8 charged with respect to any undervaluation.

9 Section 10. Subsection (3) of section 199.292, Florida
10 Statutes, is amended to read:

11 199.292 Disposition of intangible personal property
12 taxes.--All intangible personal property taxes collected
13 pursuant to this chapter shall be placed in a special fund
14 designated as the "Intangible Tax Trust Fund." The fund shall
15 be disbursed as follows:

16 (3) ~~An amount equal to 33.5 percent~~ Of the remaining
17 intangible personal property taxes collected, an amount equal
18 to 35.3 percent in state fiscal year 1998-1999 and an amount
19 equal to 37.7 percent in each year thereafter, shall be
20 transferred to the Revenue Sharing Trust Fund for Counties. ~~An~~
21 ~~amount equal to 66.5 percent~~ Of the remaining taxes collected,
22 an amount equal to 64.7 percent in state fiscal year 1998-1999
23 and an amount equal to 62.3 percent in each year thereafter,
24 shall be transferred to the General Revenue Fund of the state.

25 Section 11. Effective July 1, 2000, subsection (10) of
26 section 220.02, Florida Statutes, is amended to read:

27 220.02 Legislative intent.--

28 (10) It is the intent of the Legislature that credits
29 against either the corporate income tax or the franchise tax
30 be applied in the following order: ~~those enumerated in s.~~
31 ~~220.68,~~ those enumerated in s. 631.719(1), those enumerated in

1 s. 631.705, those enumerated in s. 220.18, those enumerated in
2 s. 631.828, those enumerated in s. 220.181, those enumerated
3 in s. 220.183, those enumerated in s. 220.182, those
4 enumerated in s. 220.1895, those enumerated in s. 221.02,
5 those enumerated in s. 220.184, those enumerated in s.
6 220.186, and those enumerated in s. 220.188.

7 Section 12. Effective July 1, 2000, subsections (4),
8 (7), and (8) of section 624.509, Florida Statutes, are amended
9 to read:

10 624.509 Premium tax; rate and computation.--

11 (4) ~~The intangible tax imposed under chapter 199,~~The
12 income tax imposed under chapter 220, and the emergency excise
13 tax imposed under chapter 221 which are paid by any insurer
14 shall be credited against, and to the extent thereof shall
15 discharge, the liability for tax imposed by this section for
16 the annual period in which such tax payments are made. As to
17 any insurer issuing policies insuring against loss or damage
18 from the risks of fire, tornado, and certain casualty lines,
19 the tax imposed by this section, as intended and contemplated
20 by this subsection, shall be construed to mean the net amount
21 of such tax remaining after there has been credited thereon
22 such gross premium receipts tax as may be payable by such
23 insurer in pursuance of the imposition of such tax by any
24 incorporated cities or towns in the state for firefighters'
25 relief and pension funds and police officers' retirement funds
26 maintained in such cities or towns, as provided in and by
27 relevant provisions of the Florida Statutes. For purposes of
28 this subsection, payments of estimated income tax under
29 chapter 220 and of estimated emergency excise tax under
30 chapter 221 shall be deemed paid either at the time the
31 insurer actually files its annual returns under chapter 220 or

1 at the time such returns are required to be filed, whichever
2 first occurs, and not at such earlier time as such payments of
3 estimated tax are actually made.

4 (7) Credits and deductions against the tax imposed by
5 this section shall be taken in the following order: deductions
6 for assessments made pursuant to s. 440.51; credits for taxes
7 paid under ss. 175.101 and 185.08; credits for income taxes
8 paid under chapter 220, the emergency excise tax paid under
9 chapter 221 and the credit allowed under subsection (5), as
10 these credits are limited by subsection (6); ~~credits for~~
11 ~~intangible taxes paid under chapter 199~~; all other available
12 credits and deductions.

13 (8) From and after July 1, 1980, the premium tax
14 authorized by this section shall not be imposed upon receipts
15 of annuity premiums or considerations paid by holders in this
16 state ~~and from and after July 1, 1991, the intangible tax~~
17 ~~imposed by chapter 199 shall not be imposed on assets equal to~~
18 ~~the statutory legal reserves of annuity products maintained by~~
19 ~~insurance companies on behalf of their holders~~ if the tax
20 savings derived are credited to the annuity holders. Upon
21 request by the Department of Revenue, any insurer availing
22 itself of this provision shall submit to the department
23 evidence which establishes that the tax savings derived have
24 been credited to annuity holders. As used in this subsection,
25 the term "holders" shall be deemed to include employers
26 contributing to an employee's pension, annuity, or
27 profit-sharing plan.

28 Section 13. For tax years beginning after December 31,
29 1999, no credit under section 624.509(4), Florida Statutes,
30 for intangible tax imposed under chapter 199, Florida
31 Statutes, shall be available.

1 Section 14. Except as otherwise expressly provided in
2 this act, this act shall take effect July 1, 1998.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 1450

7 The committee substitute for SB 1450 exempts one-third of
8 accounts receivable from intangibles tax in 1999, and
9 expresses legislative intent to exempt two-thirds of accounts
10 receivable in 2000 and totally exempt them in 2001. It will
11 require affirmative action of the Legislature to effect those
12 changes, however. The original bill provided for the phased
13 repeal and did not require future legislative action.

14 The committee substitute delays the tax exemption for banks
15 and insurance companies for a year, applying to taxes due on
16 or after July 1, 1999. The credits for intangibles taxes paid
17 that can be taken against corporate income tax and insurance
18 premium tax are preserved until tax years beginning after
19 December 31, 1999.

20 Unlike SB 1450, the committee substitute does not excuse banks
21 from having to pay intangibles tax on trusts and does not
22 excuse investment advisers from having to pay tax on accounts
23 over which they have discretionary authority.

24 The committee substitute amends the fraction of revenues from
25 the intangibles tax which are distributed to counties so that
26 they will be held harmless from reductions in total tax
27 collections.

28 The committee substitute amends the current exemption for real
29 estate mortgage investment conduits (REMICs) held by banks and
30 savings associations. It exempts from intangibles tax
31 interests in real estate securitizations, which include, but
are not limited to, real estate mortgage investment conduits
(REMICs) and financial asset securitization trust (FASITs).
Such instruments must be secured solely by mortgages, deeds or
trust, or other liens upon real property.