

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; providing that personal property of a  
10          trust will not have taxable situs in this state  
11          under specified circumstances; repealing s.  
12          199.052(11), F.S., relating to returns filed by  
13          banking organizations, to conform; amending s.  
14          199.175, F.S., relating to taxable situs;  
15          amending s. 199.175, F.S.; providing for situs  
16          of credit or charge card receivables owned,  
17          managed, or controlled by a bank or savings  
18          association; conforming provisions; amending s.  
19          199.185, F.S.; revising the exemption from  
20          intangible personal property taxes for certain  
21          property held in trust; revising the exemption  
22          for real estate mortgage investment conduits;  
23          partially exempting accounts receivable arising  
24          out of a trade or business from intangible  
25          personal property taxes; providing legislative  
26          intent to fully exempt such assets in  
27          subsequent years; exempting stock options  
28          granted to employees by an employer and stock  
29          purchased by employees under certain conditions  
30          from intangible personal property taxes;  
31          providing a full, rather than partial,

1 exemption from the annual tax for banks and  
2 savings associations and providing for  
3 application of the exemption to organizations  
4 defined by s. 220.62(1), (2), (3), and (4),  
5 F.S.; exempting insurers from the annual tax;  
6 repealing s. 199.104, F.S., which provides a  
7 credit against the annual tax for banks and  
8 savings associations; repealing s. 220.68,  
9 F.S., which provides a credit against the  
10 franchise tax imposed on banks and savings  
11 associations based on intangible tax paid;  
12 amending s. 199.282, F.S.; revising the penalty  
13 for late filing of an annual intangible tax  
14 return; providing a limitation on combined  
15 delinquency and late filing penalties; revising  
16 the penalty for omitting or undervaluing  
17 property on an annual return; amending s.  
18 199.292, F.S.; revising the distribution of  
19 intangible tax revenues; amending s. 220.02,  
20 F.S., relating to order of credits against the  
21 corporate income tax or franchise tax, and s.  
22 624.509, F.S., relating to the insurance  
23 premium tax; conforming provisions; providing  
24 application; providing effective dates.

25

26 Be It Enacted by the Legislature of the State of Florida:

27

28 Section 1. Subsections (13) and (14) are added to  
29 section 199.023, Florida Statutes, to read:

30

199.023 Definitions.--As used in this chapter:

31

1           (13) "Ministerial function" means an act the  
2 performance of which does not involve the use of discretion or  
3 judgment.

4           (14) "Processing activity" means an activity  
5 undertaken to administer or service intangible personal  
6 property in accordance with such terms, guidelines, criteria,  
7 or directions as are provided solely by the owner of the  
8 property. Methods, systems, or techniques chosen by the  
9 processor to implement such terms, guidelines, criteria, or  
10 directions are not considered the exercise of management or  
11 control.

12           Section 2. Subsection (2) of section 199.052, Florida  
13 Statutes, is amended, and subsection (15) is added to that  
14 section, to read:

15           199.052 Annual tax returns; payment of annual tax.--

16           (2) No person shall be required to pay the annual tax  
17 in any year when the aggregate annual tax upon the person's  
18 intangible personal property, after exemptions, would be less  
19 than ~~\$60~~\$5. In such case, an annual return is not required  
20 unless the taxpayer is a corporation, a banking organization  
21 claiming the exemption provided in s. 199.185(1)(i), or an  
22 agent or fiduciary of whom the department requires an  
23 informational return. Agents and fiduciaries shall report for  
24 each person for whom they hold intangible personal property if  
25 the aggregate annual tax on such person is \$60 or more ~~than~~  
26 ~~\$5~~.

27           (15) If a bank or savings association, as defined in  
28 s. 220.62, acts as a fiduciary or agent of a trust other than  
29 as a trustee, intangible personal property of the trust shall  
30 not have taxable situs in this state pursuant to s. 199.175  
31

1 solely by virtue of the management or control of the bank or  
2 savings association.

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

7 199.052 Annual tax returns; payment of annual tax.--

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

18 Section 4. Paragraph (c) is added to subsection (1) of  
19 section 199.175, Florida Statutes, to read:

20 199.175 Taxable situs.--For purposes of the annual tax  
21 imposed under this chapter:

22 (1) Intangible personal property shall have a taxable  
23 situs in this state when it is owned, managed, or controlled  
24 by any person domiciled in this state on January 1 of the tax  
25 year. Such intangibles shall be subject to annual taxation  
26 under this chapter, unless the person who owns, manages, or  
27 controls them is specifically exempt or unless the property is  
28 specifically exempt. This provision shall apply regardless of  
29 where the evidence of the intangible property is kept; where  
30 the intangible is created, approved, or paid; or where  
31 business may be conducted from which the intangible arises.

1 The fact that a Florida corporation owns the stock of an  
2 out-of-state corporation and manages and controls such  
3 corporation from a location in this state shall not operate to  
4 give a taxable situs in this state to the intangibles owned by  
5 the out-of-state corporation, which intangibles arise out of  
6 business transacted outside this state.

7 (c) Notwithstanding the provisions of this subsection,  
8 intangibles that are credit card receivables or charge card  
9 receivables or related lines of credit or loans that would  
10 otherwise be deemed to have taxable situs in this state solely  
11 because they are owned, managed, or controlled by a bank or  
12 savings association as defined in s. 220.62, or an affiliate  
13 or subsidiary thereof, which is domiciled in this state shall  
14 be treated as having a taxable situs in this state only when  
15 the debt represented by the intangible is owed by a customer  
16 who is domiciled in this state. As used in this paragraph, the  
17 terms "credit card receivables" and "charge card receivables"  
18 do not include trade or service receivables as defined in s.  
19 864 of the Internal Revenue Code of 1986, as amended.

20 Section 5. Effective July 1, 2000, paragraph (a) of  
21 subsection (1) and paragraph (b) of subsection (2) of section  
22 199.175, Florida Statutes, are amended to read:

23 199.175 Taxable situs.--For purposes of the annual tax  
24 imposed under this chapter:

25 (1) Intangible personal property shall have a taxable  
26 situs in this state when it is owned, managed, or controlled  
27 by any person domiciled in this state on January 1 of the tax  
28 year. Such intangibles shall be subject to annual taxation  
29 under this chapter, unless the person who owns, manages, or  
30 controls them is specifically exempt or unless the property is  
31 specifically exempt. This provision shall apply regardless of

1 where the evidence of the intangible property is kept; where  
2 the intangible is created, approved, or paid; or where  
3 business may be conducted from which the intangible arises.  
4 The fact that a Florida corporation owns the stock of an  
5 out-of-state corporation and manages and controls such  
6 corporation from a location in this state shall not operate to  
7 give a taxable situs in this state to the intangibles owned by  
8 the out-of-state corporation, which intangibles arise out of  
9 business transacted outside this state.

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

12 1. Any natural person who is a legal resident of this  
13 state;

14 2. Any ~~bank or financial institution,~~business,  
15 business trust as described in chapter 609, company,  
16 corporation, ~~insurance company,~~partnership, or other  
17 artificial entity organized or created under the law of this  
18 state, except a trust; or

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

21 (2) Intangible personal property shall have a taxable  
22 situs in this state when it is deemed to have a business situs  
23 in this state and it is owned, managed, or controlled by a  
24 person transacting business in this state, even though the  
25 owner may claim a domicile elsewhere. This provision shall  
26 apply regardless of where the evidence of the intangible is  
27 kept or where the intangible is created, approved, or paid.

28 (b) Notwithstanding the provisions of this subsection:

29 1.a. Intangibles that are credit card or charge card  
30 receivables or related lines of credit or loans shall be  
31 deemed to have business situs in this state only when the debt

1 represented by such intangibles is owed by a customer who is  
2 domiciled in this state.

3         b. The performance of ministerial functions relating  
4 to, or the processing of, credit card or charge card  
5 receivables in this state for the owner of such receivables is  
6 not sufficient to support a finding that the owner is  
7 transacting business in this state.

8         c. The term "credit card or charge card receivables"  
9 does not include trade or service receivables as defined in s.  
10 864 of the Internal Revenue Code of 1986, as amended.

11         2. An intangible owned by a real estate mortgage  
12 investment conduit, a real estate investment trust, or a  
13 regulated investment company, as those terms are defined in  
14 the United States Internal Revenue Code of 1986, as amended,  
15 shall not be deemed to have a taxable situs in this state  
16 unless such entity has its legal or commercial domicile in  
17 this state.

18         3. The ownership of any interest in a participation or  
19 syndication loan or pool of loans, notes, or receivables shall  
20 not be sufficient to support a finding that the owner of such  
21 interest is transacting business in this state. For the  
22 purposes of this subparagraph, a participation or syndication  
23 loan is a loan in which more than one lender is a creditor to  
24 a common borrower, and a participation or syndication interest  
25 in a pool of loans, notes, or receivables is an interest  
26 acquired from the originator or initial creditor with respect  
27 to the loans, notes, or receivables constituting the pool.

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

1 Section 6. Subsections (1) and (5) of section 199.185,  
2 Florida Statutes, are amended, and subsection (8) is added to  
3 that section, to read:

4 199.185 Property exempted from annual and nonrecurring  
5 taxes.--

6 (1) The following intangible personal property shall  
7 be exempt from the annual and nonrecurring taxes imposed by  
8 this chapter:

9 (a) Money.

10 (b) Franchises.

11 (c) Any interest as a partner in a partnership, either  
12 general or limited, other than any interest as a limited  
13 partner in a limited partnership registered with the  
14 Securities and Exchange Commission pursuant to the Securities  
15 Act of 1933, as amended.

16 (d) Notes, bonds, and other obligations issued by the  
17 State of Florida or its municipalities, counties, and other  
18 taxing districts, or by the United States Government and its  
19 agencies.

20 (e) Intangible personal property held in trust  
21 pursuant to any stock bonus, pension, or profit-sharing plan  
22 or any individual retirement account which is qualified under  
23 s. 530, s. 401, or s. 408, or s. 408A of the United States  
24 Internal Revenue Code, 26 U.S.C. ss. 530, 401, and 408, and  
25 408A, as amended.

26 (f) Intangible personal property held under a  
27 retirement plan of a Florida-based corporation exempt from  
28 federal income tax under s. 501(c)(6) of the United States  
29 Internal Revenue Code, 26 U.S.C., if the primary purpose of  
30 the corporation is to support the promotion of professional  
31 sports and the retirement plan is either a qualified plan



1 under s. 457 of the United States Internal Revenue Code or the  
2 contributions to the plan, pursuant to a ruling by the United  
3 States Internal Revenue Service, are not taxable to plan  
4 participants until actual receipt or withdrawal by the  
5 participant.

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

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

13 (i) All intangible personal property issued in or  
14 arising out of any international banking transaction and owned  
15 by a banking organization.

16 (j) Units of a unit investment trust organized under  
17 an agreement or declaration of trust and registered under the  
18 Investment Company Act of 1940, as amended, whose portfolio of  
19 assets consists solely of assets exempt under this section.

20 (k) Interests in real estate securitizations,  
21 including, but not limited to, real estate mortgage investment  
22 conduits (REMIC) and financial asset securitization trusts  
23 (FASITS), which ~~that~~ are directly or indirectly secured by or  
24 payable from notes and obligations that are in turn secured  
25 solely by a mortgage, deed of trust, or other lien upon real  
26 property situated in or outside ~~of~~ the state, including, but  
27 not limited to, mortgage pools, participations, and  
28 ~~derivatives and are held as investments by banks or savings~~  
29 ~~associations in compliance with regulatory agency guidelines.~~

30 (l) One-third of the accounts receivable arising or  
31 acquired in the ordinary course of a trade or business which

1 are owned, controlled, or managed by a taxpayer on January 1,  
2 1999, and thereafter. It is the intent of the Legislature  
3 that, pursuant to future legislative action, the portion of  
4 such accounts receivable exempt from taxation be increased to  
5 two-thirds for taxes levied on January 1, 2000, and further  
6 increased to all such accounts receivable on January 1, 2001,  
7 and thereafter. This exemption does not apply to accounts  
8 receivable which arise outside the taxpayer's ordinary course  
9 of trade or business. For the purposes of this chapter, the  
10 term "accounts receivable" means a business debt that is owed  
11 by another to the taxpayer or the taxpayer's assignee in the  
12 ordinary course of trade or business and is not supported by  
13 negotiable instruments. Accounts receivable include, but are  
14 not limited to, credit card receivables, charge card  
15 receivables, credit receivables, margin receivables, inventory  
16 or other floor plan financing, lease payments past due,  
17 conditional sales contracts, retail installment sales  
18 agreements, financing lease contracts, and a claim against a  
19 debtor usually arising from sales or services rendered and  
20 which is not necessarily due or past due. The examples  
21 specified in this paragraph shall be deemed not to be  
22 supported by negotiable instruments. The term "negotiable  
23 instrument" means a written document that is legally capable  
24 of being transferred by indorsement or delivery. The term  
25 "indorsement" means the act of a payee or holder in writing  
26 his or her name on the back of an instrument without further  
27 qualifying words other than "pay to the order of" or "pay to"  
28 whereby the property is assigned and transferred to another.  
29 (m) Stock options granted to employees by their  
30 employer pursuant to an incentive plan, if the employees  
31 cannot transfer, sell, or mortgage the options. Stock

1 purchased by an employee from an employer pursuant to an  
2 incentive plan shall be treated as a nontaxable stock option  
3 if part of the purchase price of the stock is nonrecourse debt  
4 secured by the stock and the stock cannot be sold,  
5 transferred, or assigned by the employee until the nonrecourse  
6 debt is discharged. Such stock becomes taxable stock when it  
7 can be sold, transferred, or assigned by the employee.

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

11 (8) Every insurer, as defined in s. 624.03, whether  
12 the insurer is authorized or unauthorized as defined in s.  
13 624.09, is exempt from the tax imposed by s. 199.032.

14 Section 7. The amendment to subsection (5) and the  
15 creation of subsection (8) of section 199.185, Florida  
16 Statutes, by this section shall apply to taxes due on or after  
17 July 1, 1999.

18 Section 8. Effective for tax years beginning after  
19 December 31, 1999, sections 199.104 and 220.68, Florida  
20 Statutes, are repealed.

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

23 199.282 Penalties for violation of this chapter.--

24 (3)(a) If any annual or nonrecurring tax is not paid  
25 by the due date, a delinquency penalty shall be charged. The  
26 delinquency penalty shall be 10 percent of the delinquent tax  
27 for each calendar month or portion thereof from the due date  
28 until paid, up to a limit of 50 percent of the total tax not  
29 timely paid.

30 (b) If any annual tax return required by this chapter  
31 is not filed by the due date, a penalty of 10 ~~30~~ percent of

1 the tax due with the return shall be charged for each calendar  
2 month or portion thereof during which the return remains  
3 unfiled, up to a limit of 50 percent of the total tax due for  
4 ~~each year or portion of the year during which the return~~  
5 ~~remains unfiled.~~

6  
7 For any penalty assessed under this subsection, the combined  
8 total for all penalties assessed under paragraphs (a) and (b)  
9 shall not exceed 10 percent per calendar month, up to a limit  
10 of 50 percent of the total tax due.

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

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

19 199.292 Disposition of intangible personal property  
20 taxes.--All intangible personal property taxes collected  
21 pursuant to this chapter shall be placed in a special fund  
22 designated as the "Intangible Tax Trust Fund." The fund shall  
23 be disbursed as follows:

24 (3) ~~An amount equal to 33.5 percent~~ Of the remaining  
25 intangible personal property taxes collected, an amount equal  
26 to 35.3 percent in state fiscal year 1998-1999 and an amount  
27 equal to 37.7 percent in each year thereafter, shall be  
28 transferred to the Revenue Sharing Trust Fund for Counties. ~~An~~  
29 ~~amount equal to 66.5 percent~~ Of the remaining taxes collected,  
30 an amount equal to 64.7 percent in state fiscal year 1998-1999  
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1 and an amount equal to 62.3 percent in each year thereafter,  
2 shall be transferred to the General Revenue Fund of the state.

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

5 220.02 Legislative intent.--

6 (10) It is the intent of the Legislature that credits  
7 against either the corporate income tax or the franchise tax  
8 be applied in the following order: ~~those enumerated in s.~~  
9 ~~220.68,~~ those enumerated in s. 631.719(1), those enumerated in  
10 s. 631.705, those enumerated in s. 220.18, those enumerated in  
11 s. 631.828, those enumerated in s. 220.181, those enumerated  
12 in s. 220.183, those enumerated in s. 220.182, those  
13 enumerated in s. 220.1895, those enumerated in s. 221.02,  
14 those enumerated in s. 220.184, those enumerated in s.  
15 220.186, and those enumerated in s. 220.188.

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

19 624.509 Premium tax; rate and computation.--

20 (4) ~~The intangible tax imposed under chapter 199,~~The  
21 income tax imposed under chapter 220, and the emergency excise  
22 tax imposed under chapter 221 which are paid by any insurer  
23 shall be credited against, and to the extent thereof shall  
24 discharge, the liability for tax imposed by this section for  
25 the annual period in which such tax payments are made. As to  
26 any insurer issuing policies insuring against loss or damage  
27 from the risks of fire, tornado, and certain casualty lines,  
28 the tax imposed by this section, as intended and contemplated  
29 by this subsection, shall be construed to mean the net amount  
30 of such tax remaining after there has been credited thereon  
31 such gross premium receipts tax as may be payable by such

1 insurer in pursuance of the imposition of such tax by any  
2 incorporated cities or towns in the state for firefighters'  
3 relief and pension funds and police officers' retirement funds  
4 maintained in such cities or towns, as provided in and by  
5 relevant provisions of the Florida Statutes. For purposes of  
6 this subsection, payments of estimated income tax under  
7 chapter 220 and of estimated emergency excise tax under  
8 chapter 221 shall be deemed paid either at the time the  
9 insurer actually files its annual returns under chapter 220 or  
10 at the time such returns are required to be filed, whichever  
11 first occurs, and not at such earlier time as such payments of  
12 estimated tax are actually made.

13 (7) Credits and deductions against the tax imposed by  
14 this section shall be taken in the following order: deductions  
15 for assessments made pursuant to s. 440.51; credits for taxes  
16 paid under ss. 175.101 and 185.08; credits for income taxes  
17 paid under chapter 220, the emergency excise tax paid under  
18 chapter 221 and the credit allowed under subsection (5), as  
19 these credits are limited by subsection (6); ~~credits for~~  
20 ~~intangible taxes paid under chapter 199;~~ all other available  
21 credits and deductions.

22 (8) From and after July 1, 1980, the premium tax  
23 authorized by this section shall not be imposed upon receipts  
24 of annuity premiums or considerations paid by holders in this  
25 state ~~and from and after July 1, 1991, the intangible tax~~  
26 ~~imposed by chapter 199 shall not be imposed on assets equal to~~  
27 ~~the statutory legal reserves of annuity products maintained by~~  
28 ~~insurance companies on behalf of their holders if the tax~~  
29 savings derived are credited to the annuity holders. Upon  
30 request by the Department of Revenue, any insurer availing  
31 itself of this provision shall submit to the department

1 evidence which establishes that the tax savings derived have  
2 been credited to annuity holders. As used in this subsection,  
3 the term "holders" shall be deemed to include employers  
4 contributing to an employee's pension, annuity, or  
5 profit-sharing plan.

6           Section 13. For tax years beginning after December 31,  
7 1999, no credit under section 624.509(4), Florida Statutes,  
8 for intangible tax imposed under chapter 199, Florida  
9 Statutes, shall be available.

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

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