

By Senator Klein

28-982-98

See HB 3417

1 A bill to be entitled
2 An act relating to intangible personal property
3 taxes; providing a short title; creating s.
4 199.105, F.S.; providing for taxation of
5 certain intangible personal property
6 transferred to a person or entity outside the
7 state and then repurchased to avoid taxation;
8 providing that a grantor shall be treated as
9 owning property that constitutes trust
10 principal under certain conditions; providing
11 that such transfer or trust is prima facie
12 evidence of intent to avoid taxation, and
13 providing burden of proof; amending s. 199.185,
14 F.S.; providing an exemption for accounts
15 receivable; increasing the exemption from the
16 annual tax granted to natural persons;
17 repealing s. 199.103(5), F.S., which provides
18 for valuation of accounts receivable, ss.
19 199.183(3) and 199.185(7), F.S., which provide
20 an exemption for credit card receivables owed
21 to certain banks, and s. 199.185(6), F.S.,
22 which provides an exemption for certain
23 accounts receivable owned by certain liquor
24 distributors; amending s. 199.175, F.S.;
25 removing provisions relating to the taxable
26 situs of credit card or charge card
27 receivables; creating s. 199.233, F.S.;
28 specifying the period for which the Department
29 of Revenue may assess intangible personal
30 property taxes when a liability is discovered
31 by audit or examination, or when a taxpayer

1 voluntarily self-discloses liability; providing
2 an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. This act may be cited as the "Intangible
7 Tax Equity and Simplification Act of 1998."

8 Section 2. Section 199.105, Florida Statutes, is
9 created to read:

10 199.105 Anti-avoidance provision.--

11 (1) Any taxpayer who within 60 days prior to December
12 31 of any year sells, transfers, or conveys any taxable
13 intangible personal property to any person or entity outside
14 the state, and within 60 days after the following January 1
15 repurchases or receives the same or identical property, shall
16 be taxed with regard to such property as if the transaction
17 had not taken place. Such a transfer shall be prima facie
18 evidence of intent to avoid taxation, and the burden of
19 proving the existence of a bona fide investment or business
20 purpose, other than the avoidance of taxes, for such
21 transaction shall be upon the taxpayer.

22 (2) If, by the terms or the operation of any trust,
23 any property that constitutes trust principal may revert to
24 the grantor of the trust or the grantor's estate, or to any
25 entity controlled by the grantor or whose assets inure to the
26 benefit of the grantor, during the existence or upon
27 termination of the trust, the grantor shall be treated as
28 owning the property. Such a trust shall be prima facie
29 evidence of intent to avoid taxation, and the burden of
30 proving the existence of a bona fide investment or business

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1 purpose, other than the avoidance of taxes, for such a trust
2 shall be on the taxpayer.

3 (3) The department is authorized to adopt necessary
4 rules to carry out the intent of this section.

5 Section 3. Paragraph (1) is added to subsection (1) of
6 section 199.185, Florida Statutes, and subsection (2) of said
7 section is amended, to read:

8 199.185 Property exempted from annual and nonrecurring
9 taxes.--

10 (1) The following intangible personal property shall
11 be exempt from the annual and nonrecurring taxes imposed by
12 this chapter:

13 (1) Accounts receivable.

14 (2)~~(a)~~ With respect to the ~~first mill of the~~ annual
15 tax, every natural person is entitled each year to an
16 exemption of the first ~~\$75,000~~\$20,000 of the value of
17 property otherwise subject to said tax. A husband and wife
18 filing jointly shall have an exemption of ~~\$150,000~~\$40,000.

19 ~~(b) With respect to the last mill of the annual tax,~~
20 ~~every natural person is entitled each year to an exemption of~~
21 ~~the first \$100,000 of the value of property otherwise subject~~
22 ~~to said tax. A husband and wife filing jointly shall have an~~
23 ~~exemption of \$200,000.~~

24
25 Agents and fiduciaries, other than guardians and custodians
26 under a gifts-to-minors act, filing as such may not claim this
27 exemption on behalf of their principals or beneficiaries;
28 however, if the principal or beneficiary returns the property
29 held by the agent or fiduciary and is a natural person, the
30 principal or beneficiary may claim the exemption. No taxpayer
31 shall be entitled to more than one exemption under this

1 ~~subsection paragraph (a) and one exemption under paragraph~~
2 ~~(b).~~ This exemption shall not apply to that intangible
3 personal property described in s. 199.023(1)(d).

4 Section 4. Subsection (5) of section 199.103,
5 subsection (3) of section 199.183, and subsections (6) and (7)
6 of section 199.185, Florida Statutes, are hereby repealed.

7 Section 5. Paragraph (b) of subsection (2) of section
8 199.175, Florida Statutes, is amended to read:

9 199.175 Taxable situs.--For purposes of the annual tax
10 imposed under this chapter:

11 (2) Intangible personal property shall have a taxable
12 situs in this state when it is deemed to have a business situs
13 in this state and it is owned, managed, or controlled by a
14 person transacting business in this state, even though the
15 owner may claim a domicile elsewhere. This provision shall
16 apply regardless of where the evidence of the intangible is
17 kept or where the intangible is created, approved, or paid.

18 (a) Intangibles shall be deemed to have a Florida
19 business situs when they receive the benefit and protection of
20 Florida laws and courts and they are derived from, arise out
21 of, or are issued in connection with the business transacted
22 in this state with a customer in this state. For purposes of
23 this paragraph:

24 1. Business is transacted in this state when any
25 occupation, profession, or commercial activity, including
26 financing, leasing, selling, or servicing activities, is
27 regularly conducted with customers in this state from an
28 office, plant, home, or any other business location in this
29 state.

30 2. Business is transacted in this state when any
31 occupation, profession, or commercial activity, including

1 financing, leasing, selling, or servicing activities, is
2 regularly conducted with customers in this state by or through
3 agents, employees, or representatives of any kind in this
4 state, whether or not such persons are vested with
5 discretionary authority.

6 (b) Notwithstanding the provisions of this subsection:

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

12 ~~b. The performance of ministerial functions relating~~
13 ~~to, or the processing of, credit card or charge card~~
14 ~~receivables in this state for the owner of such receivables is~~
15 ~~not sufficient to support a finding that the owner is~~
16 ~~transacting business in this state.~~

17 ~~c. The term "credit card or charge card receivables"~~
18 ~~does not include trade or service receivables as defined in s.~~
19 ~~864 of the Internal Revenue Code of 1986, as amended.~~

20 1.2. An intangible owned by a real estate mortgage
21 investment conduit, a real estate investment trust, or a
22 regulated investment company, as those terms are defined in
23 the United States Internal Revenue Code of 1986, as amended,
24 shall not be deemed to have a taxable situs in this state
25 unless such entity has its legal or commercial domicile in
26 this state.

27 2.3. The ownership of any interest in a participation
28 or syndication loan or pool of loans or ~~notes, or receivables~~
29 shall not be sufficient to support a finding that the owner of
30 such interest is transacting business in this state. For the
31 purposes of this subparagraph, a participation or syndication

1 loan is a loan in which more than one lender is a creditor to
2 a common borrower, and a participation or syndication interest
3 in a pool of loans or,~~notes, or receivables~~ is an interest
4 acquired from the originator or initial creditor with respect
5 to the loans or,~~notes, or receivables~~ constituting the pool.

6 3.4. Assets owned by a foreign insurance company, as
7 defined in s. 624.06, shall not be deemed to have a business
8 situs in this state if they are managed and controlled outside
9 this state.

10 (c) It is the intent of this subsection that no
11 nonresident may transact business in this state without paying
12 the same tax which the state imposes on residents transacting
13 the same business.

14 Section 6. Section 199.233, Florida Statutes, is
15 created to read:

16 199.233 Limitation on actions; audit assessments and
17 voluntary self-disclosure.--

18 (1) Notwithstanding the provisions of s. 95.091, when
19 a tax liability is discovered by audit or examination of a
20 taxpayer's books and records available to the department and
21 the taxpayer has failed to make the required payment of tax,
22 has failed to file a required return, or has filed a grossly
23 false or fraudulent return, the department may determine and
24 assess any tax due under this chapter within a 10-year period
25 after the date the tax is due.

26 (2) Notwithstanding the provisions of s. 95.091, when
27 a taxpayer voluntarily self-discloses a tax liability and
28 enters into an agreement on or after the effective date of
29 this act for the payment of said taxes, the maximum period for
30 which the taxpayer will be liable for any tax is 5 years,
31 beginning with calendar year 1998. For purposes of

1 administering this subsection, no liability for taxes due
2 prior to calendar year 1998 may be assessed after a taxpayer
3 has self-disclosed a liability pursuant to this subsection.

4 Section 7. This act shall take effect January 1 of the
5 year following the year in which enacted.

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8 HOUSE SUMMARY

9
10 Creates the "Intangible Tax Equity and Simplification Act
of 1998."

11 Provides for taxation of certain intangible personal
12 property transferred to a person or entity outside the
13 state and then repurchased to avoid taxation, and
14 provides that a grantor shall be treated as owning
property that constitutes trust principal under certain
conditions.

15 Exempts accounts receivable from intangible personal
16 property taxes. Increases the value of intangible
17 personal property owned by a natural person which is
18 exempt from the annual tax thereon from \$20,000, with
19 respect to the first mill of tax, and \$100,000, with
respect to the second mill of tax, to \$75,000 (these
amounts are doubled for a husband and wife filing
jointly).

20 Specifies the period for which the Department of Revenue
21 may assess intangible personal property taxes when a
22 liability is discovered by audit or examination, or when
a taxpayer voluntarily self-discloses liability.