By Representative Brown

A bill to be entitled

An act relating to intangible personal property taxes; providing a short title; creating s. 199.105, F.S.; providing for taxation of certain intangible personal property transferred to a person or entity outside the state and then repurchased to avoid taxation; providing that a grantor shall be treated as owning property that constitutes trust principal under certain conditions; providing that such transfer or trust is prima facie evidence of intent to avoid taxation, and providing burden of proof; amending s. 199.185, F.S.; providing an exemption for accounts receivable; increasing the exemption from the annual tax granted to natural persons; repealing s. 199.103(5), F.S., which provides for valuation of accounts receivable, ss. 199.183(3) and 199.185(7), F.S., which provide an exemption for credit card receivables owed to certain banks, and s. 199.185(6), F.S., which provides an exemption for certain accounts receivable owned by certain liquor distributors; amending s. 199.175, F.S.; removing provisions relating to the taxable situs of credit card or charge card receivables; creating s. 199.233, F.S.; specifying the period for which the Department of Revenue may assess intangible personal property taxes when a liability is discovered by audit or examination, or when a taxpayer voluntarily self-discloses liability; providing an effective date.

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

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

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

199.105 Anti-avoidance provision.--

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

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

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

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

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

199.185 Property exempted from annual and nonrecurring taxes.--

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

(l) Accounts receivable.

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

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

Agents and fiduciaries, other than guardians and custodians under a gifts-to-minors act, filing as such may not claim this exemption on behalf of their principals or beneficiaries; however, if the principal or beneficiary returns the property held by the agent or fiduciary and is a natural person, the principal or beneficiary may claim the exemption. No taxpayer shall be entitled to more than one exemption under this subsection ~~paragraph (a) and one exemption under paragraph (b)~~. This exemption shall not apply to that intangible personal property described in s. 199.023(1)(d).

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

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

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

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

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

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

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

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

(b) Notwithstanding the provisions of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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HOUSE SUMMARY

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

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

Exempts accounts receivable from intangible personal property taxes. Increases the value of intangible personal property owned by a natural person which is exempt from the annual tax thereon from $20,000, with 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).

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