

STORAGE NAME: h3899.fs
DATE: March 15, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3899

RELATING TO: Intangible Personal Property Taxes

SPONSOR(S): Committee on Finance and Taxation, Representative Starks and others

COMPANION BILL(S): Similar SB 1450; Compare HB 63, HB 1151, HB 2035, HB 2109, HB 3091, HB 3169, HB 3417, HB 3425, SB 320, SB 520, SB 634, SB 906

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCE AND TAXATION YEAS 12 NAYS 2
- (2) FINANCIAL SERVICES
- (3)
- (4)
- (5)

I. SUMMARY:

HB 3899 makes numerous changes to the intangible tax. The bill would raise the minimum amount of tax due before a return and payment are required from \$5 to \$60 dollars, in effect exempting the first \$80,000 of taxable intangible personal property for an individual and the first \$100,000 of taxable intangible personal property for a couple filing jointly. Accounts receivable would be exempted from the intangible tax. The exemption would be phased in over a three year period beginning January 1, 1999. The bill provides a definition for "accounts receivable." A bank or savings association that acts as a trustee, would not be required to file a return or pay intangible tax on assets held by the trust. Additionally, if the bank or savings association acts as a fiduciary or agent of a trust other than as a trustee, then the taxable intangible personal property in the trust would not have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. If an investment adviser does not own, but has discretionary authority to invest moneys on behalf of a principal, then the investment adviser would not be required to file a return and pay tax on the intangible personal property with respect to the assets the adviser purchases with the principal's funds. If an investment adviser acts as a fiduciary or an agent of a principal, then the intangible personal property of the principal would not have a taxable situs in Florida solely by virtue of the management or control of that property by the investment adviser.

Banks, savings associations and insurers would be exempted from intangible tax. Additionally, the credits for intangible tax paid which are given to banks, savings associations, and insurers would be repealed. The bill adds definitions for "ministerial function" and "processing activity." Penalties for late filing, and late payment would be capped at a combined total of no more than 10 percent per month and no more than 50 percent of the total tax due. The penalty for under reporting and undervaluation would be reduced from 30 percent to 10 percent.

Counties would be held harmless from changes in the amount of revenues collected from the intangible personal property tax. Except as otherwise stated, the provisions of HB 3899 would take effect on July 1 of the year in which enacted.

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The bill is projected to reduce General Revenue receipts by (\$87.8) million in FY 1998-99 and (\$222.1) million in FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's intangible tax was enacted in 1931 and is a tax on "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents." §199.023, F.S. Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. §199.023, F.S. The term "accounts receivable" is not defined by statute. Florida Administrative Code Rule 12C-2.002(1)(a) defines accounts receivable as "a debt which is owed by another which is not supported by a negotiable paper." Certain intangible personal property is exempt from the tax. Examples of exempt property include money, franchises, general partnership interests and retirement accounts. §199.185, F.S. The intangible tax has two parts: the annual and the nonrecurring. Only the annual tax, which is the subject of this bill, will be discussed.

The intangible tax is paid annually and is based on the value of assets as of January 1. §199.103, F.S. The return is due by June 30 with discounts for early payment. §199.042, F.S. The tax is paid by all "persons" (natural and non-natural), which include any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, personal representative, receiver, or other fiduciary, unless such persons are exempted from the tax. §199.03(3), F.S. The tax must be paid by all corporations that own, control, or manage intangible personal property which has a taxable situs within the state. §199.052(1), F.S. The terms "control" or "manage" do not include any ministerial function or any processing activity. §199.052(1), F.S. The terms "ministerial function" and "processing activity" are not defined by statute.

A Florida domiciled trustee is required to pay intangible tax on the assets held in trust since the trustee has management and control of the assets. Florida domiciled beneficiaries also must pay the intangible tax if they own a taxable beneficial interest in a trust. If the trustee has filed a return and paid the tax, the beneficiary is not required to file a return. §199.052(5), F.S. If an investment adviser has management or control over assets the adviser does not own, the assets held in Florida are subject to intangible tax.

The tax rate is capped at 2 mills by Article VII, section 2 of the Florida Constitution. The current tax rate is 2 mills (\$2 per \$1,000 of value). §199.032, F.S. Banks and savings associations are exempt from .5 mill; therefore, they are taxed at a rate of 1.5 mills. §199.185(5), F.S. With respect to the first mill of the annual tax, every natural person is entitled each year to an exemption of the first \$20,000 of the value of property otherwise subject to said tax. A husband and wife filing jointly enjoy an exemption of \$40,000. With respect to the second 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 will have an exemption of \$200,000. §199.185(2), F.S. For example, an individual who owns \$50,000 of intangible personal property would enjoy an exemption of \$20,000. An individual who owns over \$100,000, would enjoy an exemption of \$100,000. If a husband and wife own \$100,000 worth of stock in a company, they would have an exemption of \$40,000. A husband and wife who own \$300,000 worth of stock would be exempt from taxation on the first \$200,000. "Non-natural" persons, such as corporations, do not receive these exemptions.

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Banks, savings associations, and insurance companies receive credits for the intangible taxes they pay. Any bank or savings association, as defined in s. 220.62, F.S., is entitled to a credit against the intangible tax in an amount equal to 33 percent of the tax paid in the immediately preceding taxable year less the credit allowed by s. 220.68, F.S., (corporate income tax) for such bank or savings association for such year. §199.104, F.S. Banks and savings associations are also given a credit against their corporate income tax equal to the lesser of 100% of intangibles tax paid or 65% of corporate tax liability. §220.68, F.S. For example, if company A owes \$100 in corporate income tax and has paid \$65 in intangible tax, company A will only owe \$35 in corporate income tax.

Insurance companies are given a credit against their insurance premium tax for intangible tax paid. §624.509(4), F.S.

If any individual or entity owes less than \$5 in tax, no tax and no return are due. §199.052(4), F.S. An individual will owe taxes if he owns more than \$25,000 in intangible personal property. A married couple filing jointly will owe taxes if they own more than \$45,000 of intangible personal property. Corporations must file an annual informational return if they have no intangible tax liability. §199.062, F.S.

If the intangible tax is not paid by the due date, the delinquency penalty is 10 percent of the delinquent tax for each calendar month or portion thereof from the due date until paid, up to a limit of 50 percent of the total tax not timely paid. If the tax return required is not filed by the due date, a penalty of 30 percent of the tax due with the return is charged for each year or portion of the year during which the return remains unfiled. §199.282, F.S. These penalties are additive. If a tax return is filed and property is either omitted or undervalued, then a specific penalty shall be charged of 30 percent of the tax attributable to each omitted item or to each undervaluation. No delinquency or late filing penalty shall be charged with respect to any undervaluation. §199.282, F.S.

Revenues from the intangible tax are shared between the state and the counties. After administrative expenses, the counties receive 33.5 percent and the state receives 66.5 percent of the revenues. §199.292(3), F.S.

According to the Department of Revenue for 1995-1996, there were 288,648 individual filers representing \$159.9 million in taxes due and 299,711 joint filers representing \$245.1 million in taxes due, for a total of \$405 million. This represents 45 percent of total collections for 1995-1996. Total collections for fiscal year 1995-1996, were \$895.9 million.

According to Florida TaxWatch, only four other states impose a tax on intangible personal property. These include Kentucky, Michigan, Pennsylvania, and West Virginia. The Supreme Court of Kentucky recently found parts of that state's intangibles tax unconstitutional. The state of West Virginia has begun a five year phase out of the individual intangible tax by decreasing the taxable value.

B. EFFECT OF PROPOSED CHANGES:

HB 3899 makes numerous changes to the intangible personal property tax.

- The minimum amount of tax due from a taxpayer would rise from \$5 to \$60. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. In effect, an individual who on January 1 owned less than \$80,000 in taxable assets would not have to pay intangible tax or file a return, up from \$25,000. A couple filing jointly would not have to pay intangible tax or file a return if they owned less than \$100,000 in taxable assets, up from \$45,000. A business or other "non-natural person" would not have to pay the tax, and in certain cases file a return, if it owned, managed, or controlled less than \$30,000 in taxable assets.
- A bank or savings association, as defined in §220.62, that acts as a trustee to file a return or pay intangible tax on assets held by the trust. Additionally, if such a bank or savings association, acts as a fiduciary or agent of a trust other than as a trustee, the taxable intangible personal property in the trust would be deemed not to have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. Where a bank or savings association acts as a trustee, the trust would not be considered a Florida-situs trust. Each Florida resident with a beneficial interest in the trust would be responsible for returning the resident's equitable share of the trust's intangible personal property and paying the annual tax on it. Such trust would no longer have to pay intangible tax on behalf of a non-resident beneficiary.
- An investment adviser, as defined in §517.021, who does not own, but has discretionary authority to invest moneys on behalf of a principal, would not be required to file a return and pay tax on the intangible personal property with respect to the assets the adviser purchases with such funds of the principal. If an investment adviser acts as a fiduciary or an agent of a principal, intangible personal property of the principal would not have a taxable situs in Florida solely by virtue of the management or control of that property by the investment adviser.
- Accounts receivable would be exempt from the intangible tax. The exemption would be phased in over a three year period beginning January 1, 1999. "Accounts receivable" would be defined as "a business debt which is owed by another in the taxpayer's ordinary course of trade or business and is not supported by negotiable instruments." Accounts receivable include, but are not limited to, credit card receivables, charge card receivables, credit receivables, margin receivables, inventory or other floor plan financing, lease payments past due, conditional sales contract, and financing lease contracts. The exemption would not apply to accounts receivable which arise outside the taxpayer's ordinary course of trade or business. This exclusion would not apply to a person who was in the business of buying and selling intangible assets where the receivable arose in the ordinary course of business.

- Banks and savings associations, as defined in §624.03, F.S., would be exempt from the intangible tax. Sections 199.104 and 220.68, F.S., which provided credits against the corporate income tax would be repealed. Banks and savings associations would not pay intangible tax for taxes due on or after July 1, 1999. Effective July 1, 2000, the credits under §199.104, F.S., or §220.68, F.S., would be repealed.
- Insurers, as defined in §624.03, F.S., would be exempt from the intangible tax. The credit an insurer received for intangible tax against its insurance premium tax would be repealed. Insurers would not pay intangible tax after the effective date of the bill (July 1, 1998). For tax years beginning on or after January 1, 1999, no credit for intangible tax paid would be available to an insurer.
- The penalty for late payment, late filing, and under reporting and undervaluation would be reduced. The penalties for late payment and late filing would be limited to a total of 10% per month and 50% of the total tax due. The penalty for under reporting and undervaluation would be reduced from 30% to 10%.
- “Ministerial function” and “processing activity” would be defined in s. 199.023, F.S.
- Counties would be held harmless from changes in revenues due to the changes in the intangible tax. The counties’ percentage share of revenues from the intangible tax would rise over the years from their current 33.5% share to the following: FY 98-99 -- 38.6%; FY 99-2000 -- 40.2%; and for years after FY 2000-2001 -- 42.4%.

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?

N/A

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

N/A

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

N/A

- 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?

N/A

- (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. Lower Taxes:

- 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. Natural persons would not have to file a tax return or pay tax if they owe less than \$60. Banks, savings associations, and insurers would be exempt from paying the 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. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

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:

§§199.023; 199.052; 199.104; 199.175; 199.185; 199.282; 213.053; 213.054; 220.02; 220.68; 624.509, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates subsections (13) and (14) of §199.023, F.S., which define “ministerial function” and “processing activity.”

Section 2 amends §199.052, F.S. Subsection 2 is amended to increase the amount of tax owed before payment and a return are due to \$60. A new subsection (15) is created to exempt a bank or savings association that acts as a trustee of a trust from paying intangible tax on property held by that trust. A beneficiary of a trust who lives in Florida would be responsible for taxes on the intangible personal property held in the trust. Additionally, if a bank or savings association that acts as a fiduciary or agent of a trust other than the trustee, the personal property of the trust would not be considered to have a taxable situs in the state simply because the managing bank or savings association may be located in Florida.

An investment adviser, as defined in §517.021, who does not own but has authority to invest moneys on behalf of a principal, would not be required to return and pay tax on the intangible personal property with respect to the assets the adviser purchases with the principal's funds. If an investment adviser acts as a fiduciary or an agent of a principal, intangible personal property of the principal shall not have a taxable situs in this state simply because the investment adviser who manages the funds is located in the state.

Section 3 deletes language in §199.052(2) which is no longer needed due to the repeal of §199.185(1)(l), F.S. Subsection (11) of §199.052, F.S., is deleted to remove language no longer needed due to the repeal of the intangible tax on banks and savings associations. This section is effective July 1, 2000.

Section 4 amends §199.175(a)(1), F.S., to remove language no longer needed due to the repeal of the intangible tax on insurers. Section 199.175(2)(b), F.S., is amended to remove language no longer needed due to the repeal of the intangible tax on insurers.

Section 5 amends §199.175(1)(a), F.S., to remove language no longer needed due to the repeal of the intangible tax on banks and saving associations. This section is effective July 1, 2000.

Section 6, Subsection (1) creates paragraph (l) of subsection (1) of §199.185, F.S., which would exempt accounts receivable from the intangible tax. One-third of the accounts receivable would be exempt on January 1, 1999; two-thirds would be exempt on January 1, 2000; and all would be exempt on January 1, 2001. "Accounts receivable" would be defined as "a business debt which is owed by another in the taxpayer's ordinary course of trade or business and is not supported by negotiable instruments." Accounts receivable include, but are not limited to, credit card receivables, credit receivables, margin receivables, inventory or other floor plan financing, lease payments past due, conditional sales contract, and financing lease contracts. The exemption does not apply to accounts receivable which arise outside the taxpayer's ordinary course of trade or business. Section (5) is amended to exempt banks and savings associations from intangible tax. Subsection (8) is created to exempt insurers from intangible tax. Subsection (2) states that the amendment to §199.185(5), F.S., exempting banks and savings associations from the intangible tax, would apply to taxes due on or after July 1, 1999.

Section 7 repeals paragraphs (l) and (k) of s. 199.185 (1), F.S., on July 1, 2000. This language is no longer necessary as it deals with international banking transactions and investments held by banks and savings associations.

Section 8 repeals on December 31, 1999, s.199.104, F.S., which addresses the credits that banks and savings associations receive against the intangible tax. Section 220.68, F.S., which deals with credits against corporate income tax would also be repealed on December 31,1999.

Section 9 amends §199.282(3), FS., to limit the combined total of the penalties under paragraphs (a) and (b) to 10 percent per month and 50 percent of the total tax due. Subsection (4) is amended to reduce the penalty for omitted or undervalued property from 30 percent to 10 percent of the tax due to the omitted or undervalued property.

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Section 10 amends §199.292(3), F.S., is amended to change the percentage of intangible tax revenue that is distributed into the Revenue Sharing Trust Fund for Counties from 33.5 percent to 42.4 percent.

Section 11 states that notwithstanding the provisions of s. 199.292(3), Florida Statutes, the Intangible Tax Trust Fund shall be disbursed as follows:

(1) For the period July 1, 1998, through June 30, 1999, an amount equal to 38.6 percent of the remaining intangible personal property taxes collected shall be transferred to the revenue Sharing Trust Fund for Counties, and an amount equal to 61.4 percent of the remaining taxes collected shall be transferred to the General Revenue Fund of the state.

(2) For the period July 1, 1999, through June 30, 2000, an amount equal to 40.2 percent of the remaining intangible personal property taxes collected shall be transferred to the revenue Sharing Trust Fund for Counties, and an amount equal to 59.8 percent of the remaining taxes collected shall be transferred to the General Revenue Fund of the state.

Section 12 amends §220.02, F.S., to remove language no longer needed due to the repeal of the intangible tax on banks and savings associations. This section is effective July 1, 2000.

Section 13 amends §213.053(4), F.S., to remove language no longer needed due to the repeal of the intangible tax on banks and savings associations. This section is effective July 1, 2000.

Section 14 amends §213.054, F.S., to remove language no longer needed due to the repeal of the intangible tax on banks and savings associations. This section is effective July 1, 2000.

Section 15 amends §624.509, F.S., to repeal the credit for intangibles tax against an insurers' insurance premium tax.

Section 16 states: For tax years beginning on or after January 1, 1999, no credit under s. 624.509(4), Florida Statutes, for intangible tax imposed under chapter 199, Florida Statutes, shall be available.

Section 17 states: Except as other provided herein, this act shall take effect on July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	0	(\$58.6M)

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	(\$87.8M)	(\$163.5M)
Trust Fund	0	0
Local Government	0	0

The fiscal data is for the entire bill and for all taxes. The following data is for provisions that can be impacted separately, but are included in the total above.

<u>Increase Minimum Payment to \$60</u>	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	(\$9.5M)	(\$9.5M)
Trust Fund	0	0
Local Government	0	0

<u>Reduce Penalties</u>	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	(\$0.8M)	(\$0.8M)
Trust Fund	0	0
Local Government	0	0

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Total for FY 98-99 is (\$87.8M). The total for FY 99-00 is (\$222.1M).

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:

N/A

2. Direct Private Sector Benefits:

The bill raises the minimum amount of tax due before a return and payment are required from \$5 to \$60 dollars. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. An individual who owned on January 1 less than \$80,000 in taxable assets would not have to pay intangible tax or file a return. For a couple filing jointly, they would not have to pay intangible tax or file a return if they owned less than \$100,000 in taxable assets. A business or other "non-natural person" would not have to pay the tax, and in certain cases file a return, if it owned, manage, or controlled less than \$30,000 in taxable assets.

Banks, savings associations, and insurers would no longer have to pay intangible tax. Even though these entities received an offsetting tax credit against corporate income tax or insurance premium tax, these taxpayers will be saved accounting and other related costs by no longer having to pay the intangible tax.

Both businesses and individuals will have lower taxes due to the exemption of accounts receivable from intangible tax.

A bank or savings association that acts as a trustee, shall not be required to file a return or pay intangible tax on assets held by the trust. Additionally, if such a bank or savings association, acts as a fiduciary or agent of a trust other than as a trustee, the taxable intangible personal property in the trust shall not have a taxable situs in the state solely by virtue of the management or control of the bank or savings association. Trust departments of banks and savings associations will be more likely to attract out of state customers who would place their money in Florida based trusts, since the trust assets will no longer be subject to Florida's intangible tax.

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

The Florida TaxWatch established a Florida Intangible Tax Task Force to examine the impact Florida's intangible tax has on the economic development and competitive position of Florida. The task force met during the winter of 1997-98 and

concluded that certain aspects of the intangible personal property tax deterred economic growth in Florida.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

The bill will not reduce the amount of the intangible tax shared with municipalities and counties.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Lynne Overton

Keith G. Baker, Ph.D.

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Prepared by:

Legislative Research Director:

Meredith Woodrum Snowden

Stephen Hogge