

STORAGE NAME: h1875.fs

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 1875

RELATING TO: Intangible personal property taxes

SPONSOR(S): Representative Cantens

COMPANION BILL(S): SB 2496 (s)

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

- (1) FINANCIAL SERVICES
- (2) FINANCE AND TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill makes the following changes to the state's intangible tax law:

Intangible tax, commercial trust operations

The bill establishes an intangible tax exemption for all trustees. Creating an exemption from intangible tax for all trustees could potentially ensure that foreign (out-of-state) institutional trustees would not receive a preference over financial services institutions in Florida. Florida beneficiaries of any trust (foreign or domestic) who hold a taxable beneficial interest in the trust would still be required to pay intangible tax on their portion of the trust.

For instance, Bank A, a Florida institution, operates as a trustee for a trust whose beneficiaries live in Florida and Georgia and Alabama. Bank A, as trustee, would no longer be required to pay intangible tax on the assets of the trust as part of its trust management. Florida residents with a beneficial interest in the trust, however, would still be required to pay intangible tax on their ratable share. If the trustee is no longer required to pay the tax on behalf of the beneficiaries, it is conceivable that the beneficiaries may see a decrease in some trust management fees. Bank B, an Alabama institution, operates as a trustee for a trust in that state, with beneficiaries in Florida, Alabama and Georgia. Bank B pays no intangible tax on the assets of the trust, however, the Florida beneficiary must still pay intangible tax on that resident's beneficial interest in the trust.

Intangible tax, revolving lines of credit

The bill maintains the requirement that intangible tax would still be paid on any future advancement made against an instrument deemed a mortgage that provides for future advancements. However, it specifies that the nonrecurring intangible tax would be payable on the face amount of a line of credit, that is secured by a mortgage, deed of trust, or other lien, at the time the line of credit is established instead of paying intangible tax on each and every draw of the revolving line of credit.

Fiscal impact: According to the estimates provided by the Department of Revenue, with the concurrence of the Revenue Estimating Conference, the bill may result in a recurring negative fiscal impact of (\$22.83M) for FY 1999-2000, and a negative (\$30.13M) for FY 2000-2001, and FY 2001-2002.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Intangible tax, generally

Florida's intangible tax, enacted in 1931, 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." Section 199.023, F.S. (1998 Supp.) Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. Section 199.023, F.S. (1998 Supp.) The term "accounts receivable" is defined as "a business debt which is owed by another to the taxpayer or the taxpayer's assignee in the taxpayer's ordinary course of trade or business and is not supported by negotiable instruments." Section 199.185, F.S. (1998 Supp.) 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, retail installment sales agreements, financing lease contracts and a claim against a debtor usually arising from sales or services rendered and which is not necessarily due or past due. 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.

The intangible tax has two parts: the recurring (annual) and the nonrecurring. The recurring intangible tax is paid annually and is based on the value of assets as of January 1. Section 199.103, F.S. The return is due by June 30 with discounts for early payment. Section 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. Section 199.023(3), F.S. (1998 Supp.) The tax must be paid by all corporations that own, control, or manage intangible personal property which has a taxable situs within the state. Section 199.052(1), F.S. (1998 Supp.) The nonrecurring intangible tax applies to notes, bonds, or other obligations for payment of money only to the extent it is secured by a mortgage, deed of trust, or other lien upon real property in the state. The tax is usually paid when the instrument is presented for recordation.

Last year, SB 1450, which became law without the Governor's signature on May 22, 1998 (Chapter 98-132, Laws of Florida) made several changes to the intangible tax law. Among these changes, the law:

Increased the minimum amount of tax due from a taxpayer (individual, joint, and business filers) from \$5 to \$60;¹

Exempted one-third of accounts receivable from the intangible tax²

Exempted banks and savings associations, as defined in section 220.62, F.S., from the intangible tax for taxes due on or after July 1, 1999. In addition, effective July 1, 2000, the

¹The Department of Revenue (DOR) estimated that more than 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.

²The bill expresses the Legislative intent to increase the exempt amount to two-thirds on January 1, 2000 (which is the subject of currently-filed HB 27), and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action.

credits under section 199.104, F.S. (1998 Supp.), or Section 220.68, F.S. (1998 Supp.), would be repealed;³

Exempted insurers, as defined in section 624.03, F.S., from the intangible tax after July 1, 1999. An insurer would no longer receive a credit for intangible tax paid against the amount of premium tax paid starting on July 1, 2000;

Provided that intangibles that are credit card receivables or charge card receivables which would otherwise be deemed to have taxable situs in Florida solely because they are managed or controlled in Florida, shall only be treated as having a taxable situs in Florida when the debt represented by such intangibles is owed by a customer who is domiciled in this state;

Exempted stock options granted to employees by their employer pursuant to an incentive plan, and provided that the employee cannot sell, transfer, or mortgage the options. Such stock becomes taxable when the employee can sell, transfer, or assign the stock;

Expanded the exemption for real estate securitizations (REMICs) to include REMICs that are held by entities other than banks and savings associations. The new law established an exemption for financial asset securitization trusts (FASITS) which are ultimately secured solely by mortgages, deeds of trust, or other liens upon real property; and,

Modified the revenue sharing of funds between the counties and the state to hold counties harmless on their distribution from intangibles tax revenues.

Table 1 outlines the number of filers by type and the amounts collected for fiscal years 1995-96, and 1996-97, according to the latest full fiscal year estimates provided by the Department of Revenue. NOTE: these figures do not reflect the one-third reduction in the intangible tax for receivables, which went into effect this year.

<i>Table 1. Annual Intangibles Tax Data - FY 1995-96, FY 1996-97</i>				
Type of filer	1996 # of filers	FY 1995-96 Collection	1997 # of filers	FY 1996-97 Collection
Individual	288,648	\$ 160m	303,828	\$ 177m
Joint	299,811	\$ 245m	313,229	\$ 270m
Business	304,108	\$ 357m	314,577	\$ 361m
TOTAL	892,567	\$ 762m	931,634	\$ 809m

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.

Intangible tax, commercial trust operations

Chapter 658, F.S., regulates "trust business" in the state. "Trust business" is described therein as the business of acting as a fiduciary.⁴ Section 658.12(8), F.S., defines fiduciary as meaning a trustee, committee, guardian, custodian, conservator, or other personal representative of a person, property, or estate; registrar or transfer agent for evidences of indebtedness, and stocks and bonds;

³These changes are addressed in a statutory footnote, s. 199.052, F.S. (1998 Supp) as amended by section 3 of chapter 98-132, Laws of Florida.

⁴Section 658.12(20), F.S.

fiscal or financial agent; investment adviser; trustee in bankruptcy; assignee for creditors; or holder of any other position of trust. Commercial trust operations have long been regarded as a key service provided by financial institutions and, according to representatives in the financial services industry, trusts have grown exponentially in popularity as an estate planning vehicle for young, middle aged, and retirement-aged investors.

Under current law, Florida-domiciled trustees pay intangible tax on all their intangible assets, regardless of where the beneficiaries reside. A foreign-domiciled trustee pays no Florida intangible tax. If the foreign trust has a Florida beneficiary, however, and the beneficiary has a "taxable beneficial interest"⁵ in the trust, then the Florida beneficiary must pay tax on his or her ratable portion of the trust. Florida is one of the very few states which imposes an intangible tax on trust operations.

For instance, Bank A, a Florida institution, operates as a trustee for a trust whose beneficiaries live in Florida and Georgia and Alabama. Bank A pays intangible tax on the assets of the trust to the DOR as part of its trust management, and charges a fee against the trust for this service. Bank B, an Alabama institution, operates as a trustee for a trust in that state, with beneficiaries in Florida, Alabama and Georgia. Bank B pays no intangible tax on the assets of the trust, however, the Florida beneficiary must pay intangible tax on that resident's beneficial interest in the foreign trust.

Last year, Florida TaxWatch created a Florida Intangible Tax Task Force at the request of legislative leadership, and was charged with identifying the impacts of the intangible tax on Florida's economic development, and to recommend changes, if any, to the tax structure. The Task Force specifically recommended that Florida fiduciaries be exempted from intangible tax on trusts they administer. The 1998 Legislature passed some intangible tax reforms but did not pass this particular measure.

Intangible tax, revolving lines of credit

The nonrecurring intangible tax rules which apply to a revolving line of credit⁶ which is secured by a mortgage are, in the words of the Florida Bankers Association, "exquisitely complex." Under current law, nonrecurring intangible tax on a revolving line of credit is paid at the time of recording, and only on the amount of the "draw."⁷ There is no simple procedure (or tax return) for collecting and remitting tax for subsequent draws. The lender is required to send remittance to the DOR with detailed information about the facility upon which the tax was collected.

The calculation of the intangible tax is complex when the loan or obligation is secured by mixed collateral. When a loan or obligation is secured by Florida real property and other collateral (i.e., personal property or foreign real estate), s. 199.133, F.S., provides for the calculation of intangible tax by: (a) multiplying the amount of the loan by (b) the ratio which the value of the Florida real estate bears to all collateral (c) unless all the collateral is located in Florida, in which case the ratio is adjusted at the election of the tax payer based upon the nature of the property to which the lender must first look for collection (d) but in no case may the tax base exceed the value of the real property. When intangible tax liability is calculated on a revolving line of credit, the lender is required to perform the tax calculation formula each time a draw is made based on the current value of the collateral at that time. Each draw must be explained in detail to the DOR in a correspondence remitting the tax, and the consequences for underpayment of tax may result in the imposition of penalties and interest on the lender and the taxpayer and may make the mortgage itself unenforceable.

⁵A "taxable beneficial interest" includes a current right of income together with either a right to revoke the trust or a general power of appointment over the trust assets.

⁶A "revolving line of credit" is simply a floating balance line a credit that one may draw from, and pay up, on a continuing basis.

⁷Section 199.143, F.S.

B. EFFECT OF PROPOSED CHANGES:

Intangible tax, commercial trust operations

The bill establishes an intangible tax exemption for all trustees. Creating an exemption from intangible tax for all trustees could potentially ensure that foreign (out-of-state) institutional trustees would not receive a preference over financial services institutions in Florida. Florida beneficiaries of any trust (foreign or domestic) who hold a taxable beneficial interest in the trust would still be required to pay intangible tax on their portion of the trust.

For instance, Bank A, a Florida institution, operates as a trustee for a trust whose beneficiaries live in Florida and Georgia and Alabama. Bank A, as trustee, would no longer be required to pay intangible tax on the assets of the trust as part of its trust management. Florida residents with a beneficial interest in the trust, however, would still be required to pay intangible tax on their ratable share. If the trustee is no longer required to pay the tax on behalf of the beneficiaries, it is conceivable that the beneficiaries may see a decrease in some trust management fees. Bank B, an Alabama institution, operates as a trustee for a trust in that state, with beneficiaries in Florida, Alabama and Georgia. Bank B pays no intangible tax on the assets of the trust, however, the Florida beneficiary must still pay intangible tax on that resident's beneficial interest in the trust.

Intangible tax, revolving lines of credit

The bill maintains the requirement that intangible tax would still be paid on any future advancement made against an instrument deemed a mortgage that provides for future advancements. However, it specifies that the nonrecurring intangible tax would be payable on the face amount of a line of credit, that is secured by a mortgage, deed of trust, or other lien, at the time the line of credit is established instead of paying intangible tax on each and every draw of the revolving line of credit.

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?

No

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

Yes. Financial services industries which offer revolving lines of credit that are secured by a mortgage or other lien, would not be required to compute intangibles tax liability each time there was a draw on the line of credit account. Trustees of certain trusts would no longer be required to pay annual tax on trust property. Florida residents would be responsible for returns and payment of taxes for their equitable share of a trust.

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

No

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?

The bill exempts trustees from paying the annual tax on trust property and exempts property owned, managed or controlled by a trustee is exempt from the annual tax.

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

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?

The bill exempts trustees from paying the annual tax on trust property and exempts property owned, managed or controlled by a trustee is exempt from the annual tax.

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:

Amends s. 199.023 (1998 Supp.), s. 199.052 (1998 Supp.), s. 199.143, s. 199.175 (1998 Supp.), and s. 199.183, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 199.023 (1998 Supp.), F.S., redefining "beneficial interest" so that the definition would apply to a person (as opposed to a resident) with a vested interest in any trust rather than just a foreign (out-of-state) trust.

Section 2. Amends s. 199.052 (1998 Supp.), F.S., exempting trustees from paying annual tax on trust property, and providing that if a bank or savings association (as defined in s. 220.62) acts as a fiduciary or agent of a trust other than as a trustee, intangible personal property of the trust shall not have a taxable situs in Florida solely by virtue of the management or control of the bank or savings association.

Section 3. Amends s. 199.143, F.S., providing intangible tax on a that a line of credit secured by a mortgage, deed, trust or other lien would be paid once, and at face value, at the time the line is established. Intangible tax would still be paid on any future advancement made against an instrument deemed a mortgage that provides for future advancements This section would be effective January 1, 2000.

Section 4. Amends s. 199.175 (1998 Supp.), F.S., excluding a trust commercially domiciled in the state from the payment of annual intangible tax.

Section 5. Amends s. 199.175 (1998 Supp.), F.S., as amended by section 5 of chapter 98-132, Laws of Florida, excluding a trust commercially domiciled in the state from payment of the annual intangible tax. This section would be effective July 1, 2000.

Section 6. Amends s. 199.183, F.S., providing that in tangible personal property owned, managed, or controlled by a trustee of a trust is exempt from the annual tax.

Section 7. Provides an effective date of July 1, 1999, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
<u>Tax on Trust</u>			
General Revenue	(\$16.66M)	(\$16.66M)	(\$16.66M)
Local	(\$10.08M)	(\$10.08M)	(\$10.08M)
<u>Tax on Revolving Credit</u>			
General Revenue	\$3.91M	(\$3.39M)	(\$3.39M)
<u>Total</u>	(\$22.83M)	(\$30.13M)	(\$30.13M)

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
<u>Total</u>	(\$22.83M)	(\$30.13M)	(\$30.13M)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

See, Part III.A.2., above

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

According to the financial services industry representatives, financial institutions may offer a wider range of revolving credit vehicles if intangible tax liability is only incurred once, at its establishment. In addition, financial services industries may capture more trust business if the trust properties were not subject to the annual tax. Finally, by exempting trustees from paying intangible tax, beneficiaries may see a decrease in trustee fees since that duty is no longer required of them.

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

Eliminating intangible tax liability on certain trust property may result in Florida financial service industries competing on a more level playing field with other states which do not impose such taxes.

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:**

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

According to representatives of the Florida Banker's Association, this bill is an economic development bill with the focus of increasing trust business in the state. Currently, a trust with \$10 million worth of intangible property stands to incur a \$20,000 intangible tax liability annually if the situs of the trust is Florida. Consequently, a multi-state bank with branches in Florida will likely advise a client to place their trust in a state which does not have intangible tax. This bill, according to the banking industry, hopes to reverse that practice.

STORAGE NAME: h1875.fs

DATE: March 22, 1999

PAGE 10

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan L. Cutchins