

By Representative Cantens

1 A bill to be entitled
2 An act relating to intangible personal property
3 taxes; amending ss. 199.023, 199.052, 199.175,
4 and 199.183, F.S.; providing that a trustee is
5 not required to pay annual tax on trust
6 property; providing that intangible personal
7 property owned, managed, or controlled by a
8 trustee of a trust is exempt from the annual
9 tax; redefining "beneficial interest" in a
10 trust and providing that a Florida resident
11 with a beneficial interest in a trust is
12 responsible for returns and payment of tax for
13 his or her equitable share; revising provisions
14 relating to the responsibilities of a bank or
15 savings association acting as agent of a trust
16 other than as a trustee; amending s. 199.143,
17 F.S.; revising provisions which specify when
18 the nonrecurring tax is paid when a mortgage,
19 deed of trust, or other lien secures a line of
20 credit; providing effective dates.

21
22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Subsection (7) of section 199.023, Florida
25 Statutes, 1998 Supplement, is amended to read:

26 199.023 Definitions.--As used in this chapter:

27 (7) A person ~~resident~~ has a "beneficial interest" in a
28 ~~foreign~~ trust if the person ~~resident~~ has a vested interest,
29 even if subject to divestment, which includes at least a
30 current right to income and either a power to revoke the trust
31

1 or a general power of appointment, as defined in 26 U.S.C. s.
2 2041(b)(1).

3 Section 2. Subsections (5), (6), (9), and (15) of
4 section 199.052, Florida Statutes, 1998 Supplement, are
5 amended to read:

6 199.052 Annual tax returns; payment of annual tax.--

7 (5) The trustee of a ~~Florida-situs~~ trust is not
8 primarily responsible for returning the trust's intangible
9 personal property and shall not be required to pay any paying
10 the annual tax on it.

11 ~~(a) A trust has a Florida situs when:~~

12 ~~1. All trustees are residents of the state;~~

13 ~~2. There are three or more trustees sharing equally in~~
14 ~~the ownership, management, or control of the trust's~~
15 ~~intangible property, and the majority of the trustees are~~
16 ~~residents of this state; or~~

17 ~~3. Trustees consist of both residents and nonresidents~~
18 ~~and management or control of the trust is with a resident~~
19 ~~trustee.~~

20 ~~(b) When trustees consist of both residents and~~
21 ~~nonresidents and management or control is with a nonresident~~
22 ~~trustee, the trust does not have Florida situs and no return~~
23 ~~is necessary by any resident trustee.~~

24 ~~(c) A portion of the trust has Florida situs when~~
25 ~~there are two trustees, one a resident of this state and one a~~
26 ~~nonresident, and they share equally in the ownership,~~
27 ~~management, or control of the trust's intangible property. The~~
28 ~~tax on such property shall be based on the value apportioned~~
29 ~~between them.~~

30 ~~(d) If there is more than one trustee in the state,~~
31 ~~only one tax return for the trust must be filed.~~

1 ~~(e) The trust's beneficiaries, however, may~~
2 ~~individually return their equitable shares of the trust's~~
3 ~~intangible personal property and pay the tax on such shares,~~
4 ~~in which case the trustee need not return such property or pay~~
5 ~~such tax, although~~ The department may require the trustee to
6 file an informational return.

7 (6) Each Florida resident with a beneficial interest,
8 as defined in s. 199.023(7), in a ~~foreign-situs~~ trust, ~~that~~
9 ~~is, a trust with situs outside of this state,~~ is primarily
10 responsible for returning the resident's equitable share of
11 the trust's intangible personal property and paying the annual
12 tax on it. The trustee of a ~~foreign~~ trust may return and pay
13 the tax on the equitable shares of all Florida residents
14 having beneficial interests, in which case the residents need
15 not return such property or pay such tax.

16 (9) Where an agent other than a trustee has control or
17 management of intangible personal property, the principal is
18 primarily responsible for returning such property and paying
19 the annual tax on it, but the agent shall return such property
20 on behalf of the principal and pay the annual tax on it if the
21 principal fails to do so. The department may in any case
22 require the agent to file an informational return.

23 (15) If a bank or savings association, as defined in
24 s. 220.62, acts as a fiduciary or agent of a trust other than
25 as a trustee, the bank or savings association shall not be
26 responsible for returning the trust's intangible personal
27 property and shall not be required to pay any annual tax on
28 it, and of the trust shall not have taxable situs in this
29 state pursuant to s. 199.175 solely by virtue of the
30 management or control of the bank or savings association shall
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1 not be used as a basis to impose any annual tax on any person
2 or any assets of the trust.

3 Section 3. Effective January 1, 2000, section 199.143,
4 Florida Statutes, is amended to read:

5 199.143 Future advances.--

6 (1) Except as provided in subsection (3), if the
7 mortgage, deed of trust, or other lien is recorded or executed
8 after December 31, 1985, and secures ~~a line of credit or~~
9 ~~otherwise secures~~ future advances, as provided in s. 697.04,
10 the nonrecurring tax shall initially be paid on the initial
11 obligation secured, excluding future advances. Each time ~~an~~
12 ~~additional amount is borrowed or~~ a future advance is made,
13 additional nonrecurring tax shall be paid on the amount of the
14 advance. However, any increase in the amount of original
15 indebtedness caused by interest accruing under an adjustable
16 interest rate obligation having an initial interest rate
17 adjustment interval of not less than 6 months shall be taxable
18 as a future advance only to the extent such increase is a
19 computable sum certain when the original indebtedness is
20 incurred.

21 (2) The trustee, if a deed of trust, or the owner of
22 the obligation, if a mortgage or other lien, making the
23 advance shall pay the additional tax to the clerk to whom the
24 initial tax was paid. The clerk shall note the amount
25 received upon the instrument, if one has been recorded, or
26 shall otherwise give a receipt.

27 (3) If the ~~property subject to the~~ mortgage, deed of
28 trust, or other lien ~~which~~ secures a line of credit ~~is a~~
29 ~~residence of the borrower at the time the mortgage, deed of~~
30 ~~trust, or other lien is created,~~ then the nonrecurring tax
31 shall be paid as provided in s. 199.135 on the maximum amount

1 of the line of credit, except as limited by s. 199.133, and no
2 further nonrecurring tax shall be due on any borrowing under
3 the line of credit. ~~As used in this subsection, "residence"~~
4 ~~includes only a dwelling unit that is a primary, secondary, or~~
5 ~~vacation home of the borrower, who is a natural person, and~~
6 ~~that has been primarily occupied for residential or~~
7 ~~recreational purposes at any time during the immediately~~
8 ~~preceding 1-year period by the borrower or by the borrower's~~
9 ~~spouse or children. The term excludes any dwelling that is~~
10 ~~used primarily as a rental unit. Use by a member of the~~
11 ~~borrower's immediate family for consideration is deemed rental~~
12 ~~of the dwelling unit. Notwithstanding the fact that title to~~
13 ~~a dwelling unit is held by a trustee, the dwelling unit shall~~
14 ~~be considered a residence of the borrower and may be used as~~
15 ~~security for a line of credit under this subsection, as long~~
16 ~~as the dwelling unit is a residence of the borrower, as~~
17 ~~defined in this subsection.~~

18 Section 4. Paragraph (a) of subsection (1) of section
19 199.175, Florida Statutes, 1998 Supplement, is amended to
20 read:

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

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

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

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

10 1. Any natural person who is a legal resident of this
11 state;

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

17 3. Any person, excluding ~~including~~ a trust, who has
18 established a commercial domicile in this state.

19 Section 5. Effective July 1, 2000, paragraph (a) of
20 subsection (1) of section 199.175, Florida Statutes, 1998
21 Supplement, as amended by section 5 of chapter 98-132, Laws of
22 Florida, is 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 business, business trust as described in
15 chapter 609, company, corporation, partnership, or other
16 artificial entity organized or created under the law of this
17 state, except a trust; or

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

20 Section 6. Subsection (4) is added to section 199.183,
21 Florida Statutes, to read:

22 199.183 Taxpayers exempt from annual and nonrecurring
23 taxes.--

24 (4) Intangible personal property owned, managed, or
25 controlled by a trustee of a trust shall be exempt from annual
26 tax under this chapter. This exemption does not exempt from
27 annual tax:

28 (a) Persons who own, manage, or control intangible
29 personal property that is also owned, managed, or controlled
30 by a trustee.

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