HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS

BILL #: HB 227

RELATING TO: Intangible Personal Property Tax

SPONSOR(S): Representative Brown

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES
(2) FINANCE AND TAXATION
(3) GENERAL APPROPRIATIONS
(4)
(5)

I. SUMMARY:

HB 227 makes the following changes to current law regarding intangible personal property tax:

- Reduces the minimum amount by which a tax liability would accrue for single, married, and businesses, from $60 to $5

- Replaces the current two-tiered tax system (with separate exemption amounts for the first and second mil) with a flat, 2 mil tax on intangibles (with a single exemption amount for single and joint filers).

- Replaces the current exemption amounts for single filers ($20,000 for the first mil and $100,000 for the second mil) with a flat $75,000 exemption amount. Replaces the split exemption amounts for joint filers ($40,000 for the first mil and $200,000 for the second mil) with a flat $150,000 exemption amount.

The fiscal impact of HB 227 is indeterminate at this time. The next General Revenue Estimating Conference is scheduled for early March.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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 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.)

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 tax[2]

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[1]The Department of Revenue 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.

[2]The bill expresses the Legislative intent to increase the exempt amount to two-thirds on January 1, 2000, and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action.

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 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.

Table 1. Annual Intangibles Tax Data - FY 1995-96, FY 1996-97

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

[3]These 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.

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 227 makes the following changes to current law regarding intangible personal property tax:

- Reduces the minimum tax threshold amount by which a tax liability would accrue for single, married, and businesses, from $60 to $5
- Replaces the current two-tiered tax system (with separate exemption amounts for the first and second mil) with a flat, 2 mil tax on intangibles (with a single exemption amount for single and joint filers).
- Replaces the current exemption amounts for single filers ($20,000 for the first mil and $100,000 for the second mil) with a flat $75,000 exemption amount. Replaces the split exemption amounts for joint filers ($40,000 for the first mil and $200,000 for the second mil) with a flat $150,000 exemption amount.

Table 2 compares the current law regarding intangibles tax on personal property with the changes proposed by HB 227.

Table 2. Comparing current law with HB 227 and the tax on personal intangible property.

Type of filer	**Exemption dollar amount**	**Minimum dollar amount of assets before taxes are due**
<u>Current law</u>		
Single filer	$20,000 (first mil) $100,000 (second mil)	$ 80,000
Joint filer	$40,000 (first mil) $200,000 (second mil)	$100,000
Business filer	$ 0	$ 30,000
<u>HB 227</u>		
Single filer	$ 75,000	$ 77,500
Joint filer	$150,000	$152,500
Business filer	$ 0	$ 2,500

As an example of the effect of the proposed changes, Table 3 compares the tax amounts that would be due and owing from each filer type, under the current law, and the law proposed under HB 227, if there were $300,000 of taxable property. The $300,000 figure was chosen in part at random, and in part because a person with $300,000 worth of taxable property would be required to file a return under the current law and under the proposed law.

Table 3. Comparing the tax dollar amounts that would be due and owing from each filer type, under the current law, with the law proposed under HB 227, if there were $300,000 of taxable property.

Current law		**HB 227**	
Single filer	$460	Single filer	$450
Joint filer	$320	Joint filer	$300
Business filer	$ 600	Business filer	$600

Under the hypothetical situation created in Table 3, the proposed change resulted in a slight decrease in tax liability for individual and joint filers.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

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

The DOR may experience an increase in filings. Last year, the intangibles tax law was changed so that the minimum amount of tax due from a taxpayer rose from $5 to $60. The DOR estimated that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. Lowering the threshold from $60 to $5 may increase the number of filings for the department to process.

(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?

Although taxes may not be increased *per se*, the number of persons having to file tax returns may increase.

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

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?

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:

Amends s. 199.052 (1998 Supp.), and s. 199.185, F.S. (1998 Supp.)

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates a title -- the Intangible Tax Equity and Simplification Act of 1999.

Section 2. Amends s. 199.052 (2), F.S. (1998 Supp.), decreasing the minimum amount of annual intangible personal property tax which a person may be required to pay, from $60 to $5.

Section 3. Amends s. 199.052 (2), F.S. (1998 Supp.), as amended by section 3 of chapter 98-132, Laws of Florida, decreasing the minimum amount of annual intangible personal property tax which a person may be required to pay, from $60 to $5, effective July 1, 2000. This section amends a statutory footnote.

Section 4. Amends s. 199.185, F.S. (1998 Supp.), replacing the current two-tiered tax system with a flat, 2 mil tax on intangibles. This amendment also replaces the current exemption amounts for single filers ($20,000 for the first mil and $100,000 for the second mil) with a flat $75,000 exemption amount. Finally, the amendment replaces the split exemption amounts for joint filers ($40,000 for the first mil and $200,000 for the second mil) with a flat $150,000 exemption amount.

Section 5. Provides an effective date of January 1, 2000, unless otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate. See, Part III.D., FISCAL COMMENTS

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

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:

The bill reduces the minimum amount of tax due before a return and payment are required from $60 to $5 dollars, reversing a change in this same section passed by the Legislature last year, which *raised* the minimum amount from $5 to $60. At that time, the Department of Revenue estimated that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of the change. The adverse result (more filings) may be expected due to this change.

As a result of the changes passed last year, 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. Reducing the minimum amount of tax due from $60 to $5 may require a business to file a return if it owns, manages, or controls more than $2,500.

2. Direct Private Sector Benefits:

   Benefits may include a simplified math process for determining tax liability, and possibly a decrease in overall annual tax liability due to the increased exemption amounts: (1) for single filers, the $20,000 for the first mil and $100,000 for the second mil exemption amounts would be replaced with a single exemption amount of $75,000; and, (2) for joint filers, the $40,000 for the first mil and $200,000 for the second mil exemption amounts would be replaced by a single exemption amount of $150,000.

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

   N/A

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate at this time. The next General Revenue Estimating Conference is scheduled for early March.

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:

Section 2 of the bill amends s. 199.052 (2), F.S. (1998 Supp.), with an effective date of January 1, 2000.

Section 3 of the bill amends a footnote to s. 199.052 (2), F.S. (1998 Supp.) The footnote explains that the statutory language contained therein will replace the statutory text of s. 199.185 (2) (1998 Supp.) on July 1, 2000.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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