

By Senator Horne

6-1603-99

1                                   A bill to be entitled  
 2           An act relating to the tax on intangible  
 3           personal property; amending ss. 199.023,  
 4           199.052, 199.175, F.S.; redefining the term  
 5           "beneficial interest"; exempting trustees from  
 6           paying the tax on trusts that they administer;  
 7           amending s. 199.143, F.S.; revising the method  
 8           of calculating the tax on future advances;  
 9           providing an effective date.

10

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

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13           Section 1. Subsection (7) of section 199.023, Florida  
 14 Statutes, 1998 Supplement, is amended to read:

15           199.023 Definitions.--As used in this chapter:

16           (7) A person ~~resident~~ has a "beneficial interest" in a  
 17 ~~foreign~~ trust if the person ~~resident~~ has a vested interest,  
 18 even if subject to divestment, which includes at least a  
 19 current right to income and either a power to revoke the trust  
 20 or a general power of appointment, as defined in 26 U.S.C. s.  
 21 2041(b)(1).

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

25           199.052 Annual tax returns; payment of annual tax.--

26           (5) The trustee of a ~~Florida-situs~~ trust is not  
 27 ~~primarily~~ responsible for returning the trust's intangible  
 28 personal property and is not required to pay ~~paying~~ the annual  
 29 tax on it.

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

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

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

5           ~~3. Trustees consist of both residents and nonresidents~~  
6 ~~and management or control of the trust is with a resident~~  
7 ~~trustee.~~

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

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

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

20           ~~(e) The trust's beneficiaries, however, may~~  
21 ~~individually return their equitable shares of the trust's~~  
22 ~~intangible personal property and pay the tax on such shares,~~  
23 ~~in which case the trustee need not return such property or pay~~  
24 ~~such tax, although the department may require the trustee to~~  
25 ~~file an informational return.~~

26           (6) Each Florida resident with a beneficial interest,  
27 as defined in s. 199.023(7), in a ~~foreign-situs~~ trust, ~~that~~  
28 ~~is, a trust with situs outside of this state, is primarily~~  
29 responsible for returning the resident's equitable share of  
30 the trust's intangible personal property and paying the annual  
31 tax on it. The trustee of a ~~foreign~~ trust may return and pay

1 the tax on the equitable shares of all Florida residents  
2 having beneficial interests, in which case the residents need  
3 not return such property or pay such tax.

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

11 (15) If a bank or savings association, as defined in  
12 s. 220.62, acts as a fiduciary or agent of a trust other than  
13 as a trustee, the bank or savings association is not  
14 responsible for returning the trust's intangible personal  
15 property and is not required to pay any annual tax on it, and  
16 of the trust shall not have taxable situs in this state  
17 pursuant to s. 199.175 solely by virtue of the management or  
18 control of the bank or savings association may not be used as  
19 a basis for imposing any annual tax on any person or on any  
20 assets of the trust.

21 Section 3. Section 199.143, Florida Statutes, is  
22 amended to read:

23 199.143 Future advances.--

24 (1) Except as provided in subsection (3), if the  
25 mortgage, deed of trust, or other lien is recorded or executed  
26 after December 31, 1985, and secures ~~a line of credit or~~  
27 ~~otherwise secures~~ future advances, as provided in s. 697.04,  
28 the nonrecurring tax shall initially be paid on the initial  
29 obligation secured, excluding future advances. Each time ~~an~~  
30 ~~additional amount is borrowed or~~ a future advance is made,  
31 additional nonrecurring tax shall be paid on the amount of the

1 advance. However, any increase in the amount of original  
2 indebtedness caused by interest accruing under an adjustable  
3 interest rate obligation having an initial interest rate  
4 adjustment interval of not less than 6 months shall be taxable  
5 as a future advance only to the extent such increase is a  
6 computable sum certain when the original indebtedness is  
7 incurred.

8 (2) The trustee, if a deed of trust, or the owner of  
9 the obligation, if a mortgage or other lien, making the  
10 advance shall pay the additional tax to the clerk to whom the  
11 initial tax was paid. The clerk shall note the amount  
12 received upon the instrument, if one has been recorded, or  
13 shall otherwise give a receipt.

14 (3) ~~If the property subject to the mortgage, deed of~~  
15 ~~trust, or other lien which secures a line of credit is a~~  
16 ~~residence of the borrower at the time the mortgage, deed of~~  
17 ~~trust, or other lien is created, then the nonrecurring tax~~  
18 ~~shall be paid as provided in s. 199.135 on the maximum amount~~  
19 ~~of the line of credit, except as limited by s. 199.133, and no~~  
20 ~~further nonrecurring tax shall be due on any borrowing under~~  
21 ~~the line of credit. As used in this subsection, "residence"~~  
22 ~~includes only a dwelling unit that is a primary, secondary, or~~  
23 ~~vacation home of the borrower, who is a natural person, and~~  
24 ~~that has been primarily occupied for residential or~~  
25 ~~recreational purposes at any time during the immediately~~  
26 ~~preceding 1-year period by the borrower or by the borrower's~~  
27 ~~spouse or children. The term excludes any dwelling that is~~  
28 ~~used primarily as a rental unit. Use by a member of the~~  
29 ~~borrower's immediate family for consideration is deemed rental~~  
30 ~~of the dwelling unit. Notwithstanding the fact that title to~~  
31 ~~a dwelling unit is held by a trustee, the dwelling unit shall~~

1 ~~be considered a residence of the borrower and may be used as~~  
2 ~~security for a line of credit under this subsection, as long~~  
3 ~~as the dwelling unit is a residence of the borrower, as~~  
4 ~~defined in this subsection.~~

5 Section 4. Paragraph (a) of subsection (1) of section  
6 199.175, Florida Statutes, 1998 Supplement, is amended to  
7 read:

8 199.175 Taxable situs.--For purposes of the annual tax  
9 imposed under this chapter:

10 (1) Intangible personal property shall have a taxable  
11 situs in this state when it is owned, managed, or controlled  
12 by any person domiciled in this state on January 1 of the tax  
13 year. Such intangibles shall be subject to annual taxation  
14 under this chapter, unless the person who owns, manages, or  
15 controls them is specifically exempt or unless the property is  
16 specifically exempt. This provision shall apply regardless of  
17 where the evidence of the intangible property is kept; where  
18 the intangible is created, approved, or paid; or where  
19 business may be conducted from which the intangible arises.  
20 The fact that a Florida corporation owns the stock of an  
21 out-of-state corporation and manages and controls such  
22 corporation from a location in this state shall not operate to  
23 give a taxable situs in this state to the intangibles owned by  
24 the out-of-state corporation, which intangibles arise out of  
25 business transacted outside this state.

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

- 28 1. Any natural person who is a legal resident of this  
29 state;
- 30 2. Any bank or financial institution, business,  
31 business trust as described in chapter 609, company,

1 corporation, insurance company, partnership, or other  
2 artificial entity organized or created under the law of this  
3 state, except a trust; or

4 3. Any person, ~~including a trust~~, who has established  
5 a commercial domicile in this state.

6 Section 5. Effective July 1, 2000, paragraph (a) of  
7 subsection (1) of section 199.175, Florida Statutes, 1998  
8 Supplement, as amended by section 5 of chapter 98-132, Laws of  
9 Florida, is amended to read:

10 199.175 Taxable situs.--For purposes of the annual tax  
11 imposed under this chapter:

12 (1) Intangible personal property shall have a taxable  
13 situs in this state when it is owned, managed, or controlled  
14 by any person domiciled in this state on January 1 of the tax  
15 year. Such intangibles shall be subject to annual taxation  
16 under this chapter, unless the person who owns, manages, or  
17 controls them is specifically exempt or unless the property is  
18 specifically exempt. This provision shall apply regardless of  
19 where the evidence of the intangible property is kept; where  
20 the intangible is created, approved, or paid; or where  
21 business may be conducted from which the intangible arises.  
22 The fact that a Florida corporation owns the stock of an  
23 out-of-state corporation and manages and controls such  
24 corporation from a location in this state shall not operate to  
25 give a taxable situs in this state to the intangibles owned by  
26 the out-of-state corporation, which intangibles arise out of  
27 business transacted outside this state.

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

30 1. Any natural person who is a legal resident of this  
31 state;

1           2. Any business, business trust as described in  
2 chapter 609, company, corporation, partnership, or other  
3 artificial entity organized or created under the law of this  
4 state, except a trust; or

5           3. Any person, ~~including a trust~~, who has established  
6 a commercial domicile in this state.

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

9           199.183 Taxpayers exempt from annual and nonrecurring  
10 taxes.--

11           (4) Intangible personal property that is owned,  
12 managed, or controlled by a trustee of a trust is exempt from  
13 annual tax under this chapter. This exemption does not apply  
14 to:

15           (a) A person who owns, manages, or controls intangible  
16 personal property that is also owned, managed, or controlled  
17 by a trustee; or

18           (b) A resident of this state who has a taxable  
19 beneficial interest, as defined in s. 199.023(7), in a trust.

20           Section 7. Except as otherwise expressly provided in  
21 this act, this act shall take effect July 1, 1999.

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24           SENATE SUMMARY

25           Relates to the tax on intangible personal property.  
26           Redefines the term "beneficial interest." Exempts  
27           trustees from paying the tax on trusts that they  
28           administer. Revises the method of calculating the tax on  
29           future advances.  
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