

By Senator Horne

6-201-00

1 A bill to be entitled
2 An act relating to the tax on intangible
3 personal property; amending s. 199.023, F.S.;
4 amending the definition of the term "beneficial
5 interest"; amending s. 199.052, F.S.; relieving
6 trustees of specified obligations; deleting a
7 distinction between Florida-situs trusts and
8 foreign-situs trusts; amending the obligations
9 of Florida residents who have a beneficial
10 interest in a trust; imposing obligations on
11 certain agents other than trustees; exempting
12 certain banks and savings associations from
13 specified responsibilities; providing that a
14 bank's or savings association's management or
15 control of certain intangible personal property
16 may not be used as the basis for imposing the
17 tax; amending s. 199.175, F.S.; amending, for
18 purposes of determining taxable situs, the
19 definition of the term "any person domiciled in
20 this state"; amending s. 199.183, F.S.;
21 exempting from the tax certain intangible
22 personal property that is owned, managed, or
23 controlled by a trustee of a trust; providing
24 for retroactivity; providing an effective date.

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

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28 Section 1. Subsection (7) of section 199.023, Florida
29 Statutes, is amended to read:

30 199.023 Definitions.--As used in this chapter:
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1 (7) A person resident has a "beneficial interest" in a
2 foreign trust if the person resident has a vested interest,
3 even if subject to divestment, which includes at least a
4 current right to income and either a power to revoke the trust
5 or a general power of appointment, as defined in 26 U.S.C. s.
6 2041(b)(1).

7 Section 2. Subsections (5), (6), (9), and (15) of
8 section 199.052, Florida Statutes, are amended to read:

9 199.052 Annual tax returns; payment of annual tax.--

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

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

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

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

20 ~~3. Trustees consist of both residents and nonresidents~~
21 ~~and management or control of the trust is with a resident~~
22 ~~trustee.~~

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

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

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

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

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

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

27 (15) If a bank or savings association, as defined in
28 s. 220.62, acts as a fiduciary or agent of a trust other than
29 as a trustee, the bank or savings association is not
30 responsible for returning the trust's intangible personal
31 property and is not required to pay any annual tax on it, and

1 ~~intangible personal property of the trust shall not have~~
2 ~~taxable situs in this state pursuant to s. 199.175 solely by~~
3 ~~virtue of the management or control of the bank or savings~~
4 ~~association may not be used as the basis for imposing any~~
5 ~~annual tax on any person or any assets of the trust.~~

6 Section 3. Paragraph (a) of subsection (1) of section
7 199.175, Florida Statutes, is amended to 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 business, business trust as described in
31 chapter 609, company, corporation, partnership, or other

1 artificial entity organized or created under the law of this
2 state, except a trust; or

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

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

7 199.183 Taxpayers exempt from annual and nonrecurring
8 taxes.--

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

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

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

18 Section 5. This act shall take effect July 1, 2000,
19 and applies retroactively to any intangible personal property
20 tax imposed on or after July 1, 1999.

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SENATE SUMMARY

Amends provisions relating to the tax on intangible personal property. Amends the definition of the term "beneficial interest." Relieves trustees of specified obligations. Deletes the distinction between Florida-situs trusts and foreign-situs trusts. Amends the obligations of Florida residents who have a beneficial interest in a trust. Imposes obligations on certain agents other than trustees. Exempts certain banks and savings associations from specified responsibilities. Provides that the management or control of certain intangible personal property by a bank or savings association may not be used as the basis for imposing the tax. Amending, for purposes of determining taxable situs, the definition of the term "any person domiciled in this state." Exempts from the tax certain intangible personal property that is owned, managed, or controlled by a trustee of a trust. Provides that the act applies retroactively to intangible personal property taxes imposed on or after July 1, 1999.