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DATE: January 18, 2000

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

BILL #: HB 415

RELATING TO: The tax on intangible personal property

SPONSOR(S): Representatives Cantens and Argenio

TIED BILL(S):

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

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
 - (2) REAL PROPERTY AND PROBATE
 - (3) FINANCE AND TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Florida Law imposes an intangible tax on assets that are "owned, managed or controlled" by a person domiciled in Florida. Florida residents are required to pay intangible tax regardless of where their investment advisor is physically located, however, if a non-resident hires a Florida investment advisor and grants the advisor discretion to manage the account (i.e., to trade securities), that discretion constitutes "control" over the assets sufficient to require taxation on the assets, according to the Department of Revenue.

This bill amends the intangible property tax law so that tax liability will not be imposed upon non-resident assets simply because a Florida trustee owns, manages or controls those assets. Florida residents will still be taxed regardless of the physical location of their trustees.

Banks or savings associations acting as a fiduciary or agent of a trust other than as a trustee are not required to pay annual tax on the trust, and the management or control of the bank or savings association may not be used as a basis for imposing annual tax on any person or on the assets of the trust.

In addition to exempting trustees, the bill also specifically exempts the intangible personal property owned, managed or controlled by trustees from the annual tax liability. However, this exemption is not extended to a resident of Florida who has a taxable "beneficial interest" in a trust or to a person who owns, manages or controls property also owned, managed, or controlled by a trustee. An agent, *other than a trustee*, who manages or controls intangible personal property will still be required to pay the annual tax out of the trust if the principal fails to do so.

Based on figures released by the Fiscal Impact Conference on December 3, 1999, the medial fiscal impact of this bill is estimated to be a negative (\$21.78 million) for FY 2000-2001, and FY 2001-2002.

Amendments:

The Committee on Financial Services adopted one amendment which exempts Florida investment advisors from paying the annual tax on accounts owned by non-residents of the state. The estimated fiscal impact of the amendment is an additional \$1.8 million annually. For further information, see Section VI of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 658, F.S., regulates "trust business" in the state. "Trust business" is described therein as the business of acting as a fiduciary.¹ 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; 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.

Florida Law imposes an intangible tax on assets that are "owned, managed or controlled" by a person domiciled in Florida.² For purposes of the Florida intangible tax law, the statute differentiates management or control over assets to exclude ministerial or processing activities. Florida residents are required to pay intangible tax regardless of where their investment advisor is physically located, however, if a non-resident hires a Florida investment advisor and grants the advisor discretion to manage the account (i.e., to trade securities), that discretion constitutes "control" over the assets sufficient to require taxation on the assets, according to the Department of Revenue. Non-Florida residents may be less likely to seek the services of Florida investment advisors if to do so triggers a tax consequence that is not imposed beyond Florida's border.

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.

¹Section 658.12(20), F.S.

²Section 199.052, Florida Statutes.

The 1998 and the 1999 Florida TaxWatch task force on intangible tax recommended amending the intangible tax law so that simply managing other people's money was not a basis for imposing a tax.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the intangible property tax law so that tax liability will not be imposed upon non-resident assets simply because a Florida trustee owns, manages or controls those assets. Florida residents will still be taxed regardless of the physical location of their trustees.

Banks or savings associations acting as a fiduciary or agent of a trust other than as a trustee will no longer be required to pay annual tax on the trust, and the management or control of the bank or savings association may not be used as a basis for imposing annual tax on any person or on the assets of the trust.

In addition to exempting trustees, the bill will also specifically exempt the intangible personal property owned, managed or controlled by trustees from the annual tax liability. However, this exemption will not be extended to a resident of Florida who has a taxable "beneficial interest" in a trust or to a person who owns, manages or controls property also owned, managed, or controlled by a trustee. An agent, *other than a trustee*, who manages or controls intangible personal property will still be required to pay the annual tax out of the trust if the principal fails to do so.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 199.023, 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, 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. 199.175, F.S., excluding a trust commercially domiciled in the state from the payment of annual intangible tax.

Section 4. Amends s. 199.183, F.S., providing that intangible personal property owned, managed, or controlled by a trustee of a trust is exempt from the annual tax. This section also stipulates that neither persons who own, manage or control intangible personal property for trustees or Florida residents with beneficial interests in trusts will be exempted from payment of the tax.

Section 5. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

<u>Intangible Tax on Trusts</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
General Revenue	(\$13.57m)	(\$13.57m)
<u>Local</u>	<u>(\$ 8.21m)</u>	<u>(\$ 8.21m)</u>
Total	(\$21.78m)	(\$21.78m)

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See, Part III.A.1., above.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Financial services industries may capture more trust business if the trust properties were not subject to the annual tax. In addition, by exempting trustees from paying intangible tax, beneficiaries may see a decrease in trustee fees since that duty is no longer required of them.

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 counties and municipalities 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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER 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.

As of this writing, this bill is identical to the Senate companion bill, SB 192, by Senator Horne.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 18, 2000, the Committee on Financial Services adopted one amendment offered by Representative C. Green, which was accepted without objection. The amendment exempts Florida investment advisors from paying the annual tax on accounts owned by non-residents of the state. Florida beneficiaries must still pay the tax. The estimated fiscal impact of the amendment is an additional \$1.8 million annually.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins