

By the Committee on Fiscal Resource and Senator Lee

314-1670-00

1 A bill to be entitled
2 An act relating to the tax on intangible
3 personal property; amending s. 199.032, F.S.;
4 reducing the rate of such tax; amending s.
5 199.033, F.S.; reducing the rates of the tax on
6 securities in a Florida Futures Investment Fund
7 to conform; amending s. 199.185, F.S.;
8 exempting accounts receivable from the tax as
9 of a specified date; deleting an exemption from
10 the tax to conform; amending s. 199.023, F.S.;
11 amending the definition of the term "beneficial
12 interest"; amending s. 199.052, F.S.; relieving
13 trustees of specified obligations; deleting a
14 distinction between Florida-situs trusts and
15 foreign-situs trusts; amending the obligations
16 of Florida residents who have a beneficial
17 interest in a trust; imposing obligations on
18 certain agents other than trustees; exempting
19 certain banks and savings associations from
20 specified responsibilities; providing that a
21 bank's or savings association's management or
22 control of certain intangible personal property
23 may not be used as the basis for imposing the
24 tax; relieving Florida investment advisors of
25 specified obligations; amending s. 199.175,
26 F.S.; amending, for purposes of determining
27 taxable situs, the definition of the term "any
28 person domiciled in this state"; amending s.
29 199.183, F.S.; exempting from the tax certain
30 intangible personal property that is owned,
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1 managed, or controlled by a trustee of a trust;
2 providing an effective date.

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

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6 Section 1. Section 199.032, Florida Statutes, is
7 amended to read:

8 199.032 Levy of annual tax.--An annual tax of 1 mill
9 ~~1.5 mills~~ is imposed on each dollar of the just valuation of
10 all intangible personal property that has a taxable situs in
11 this state, except for notes and other obligations for the
12 payment of money, other than bonds, which are secured by
13 mortgage, deed of trust, or other lien upon real property
14 situated in the state. This tax shall be assessed and
15 collected as provided in this chapter.

16 Section 2. Section 199.033, Florida Statutes, is
17 amended to read:

18 199.033 Securities in a Florida's Future Investment
19 Fund; tax rate.--

20 (1) Notwithstanding the provisions of this chapter,
21 the tax imposed under s. 199.032 on securities in a Florida's
22 Future Investment Fund shall apply at the rate of 0.85 mill
23 ~~1.35 mills~~ when the average daily balance in such funds
24 exceeds \$2 billion and at the rate of 0.70 mill ~~1.20 mills~~
25 when the average daily balance in such funds exceeds \$5
26 billion.

27 (2) This section shall not apply in any year in which
28 the revenues of the foundation in the previous calendar year
29 are less than the tax savings allowed by this section. "Tax
30 savings" means the difference between the tax that would be
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1 imposed pursuant to s. 199.032 and the tax rate specified in
2 subsection (1).

3 Section 3. Paragraph (1) of subsection (1) and
4 subsection (2) of section 199.185, Florida Statutes, are
5 amended to read:

6 199.185 Property exempted from annual and nonrecurring
7 taxes.--

8 (1) The following intangible personal property shall
9 be exempt from the annual and nonrecurring taxes imposed by
10 this chapter:

11 (1) ~~Two-thirds of~~ The accounts receivable arising or
12 acquired in the ordinary course of a trade or business which
13 are owned, controlled, or managed by a taxpayer on January 1,
14 2001 ~~2000~~, and thereafter. ~~It is the intent of the Legislature~~
15 ~~that, pursuant to future legislative action, the portion of~~
16 ~~such accounts receivable exempt from taxation be increased to~~
17 ~~all such accounts receivable on January 1, 2001, and~~
18 ~~thereafter.~~ This exemption does not apply to accounts
19 receivable that arise outside the taxpayer's ordinary course
20 of trade or business. For the purposes of this chapter, the
21 term "accounts receivable" means a business debt that is owed
22 by another to the taxpayer or the taxpayer's assignee in the
23 ordinary course of trade or business and is not supported by
24 negotiable instruments. Accounts receivable include, but are
25 not limited to, credit card receivables, charge card
26 receivables, credit receivables, margin receivables, inventory
27 or other floor plan financing, lease payments past due,
28 conditional sales contracts, retail installment sales
29 agreements, financing lease contracts, and a claim against a
30 debtor usually arising from sales or services rendered and
31 which is not necessarily due or past due. The examples

1 specified in this paragraph shall be deemed not to be
2 supported by negotiable instruments. The term "negotiable
3 instrument" means a written document that is legally capable
4 of being transferred by indorsement or delivery. The term
5 "indorsement" means the act of a payee or holder in writing
6 his or her name on the back of an instrument without further
7 qualifying words other than "pay to the order of" or "pay to"
8 whereby the property is assigned and transferred to another.

9 (2)(a) ~~With respect to the first mill of the annual~~
10 ~~tax,~~ Every natural person is entitled each year to an
11 exemption of the first \$20,000 of the value of property
12 otherwise subject to said tax. A husband and wife filing
13 jointly shall have an exemption of \$40,000.

14 (b) ~~With respect to the last 0.5 mill of the annual~~
15 ~~tax, every natural person is entitled each year to an~~
16 ~~exemption of the first \$100,000 of the value of property~~
17 ~~otherwise subject to said tax. A husband and wife filing~~
18 ~~jointly shall have an exemption of \$200,000.~~ Agents and
19 fiduciaries, other than guardians and custodians under a
20 gifts-to-minors act, filing as such may not claim this
21 exemption on behalf of their principals or beneficiaries;
22 however, if the principal or beneficiary returns the property
23 held by the agent or fiduciary and is a natural person, the
24 principal or beneficiary may claim the exemption. No taxpayer
25 shall be entitled to more than one exemption under this
26 subsection ~~paragraph (a) and one exemption under paragraph~~
27 ~~(b)~~. This exemption shall not apply to that intangible
28 personal property described in s. 199.023(1)(d).

29 Section 4. Subsection (7) of section 199.023, Florida
30 Statutes, is amended to read:

31 199.023 Definitions.--As used in this chapter:

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

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

8 199.052 Annual tax returns; payment of annual tax.--

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

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

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

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

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

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

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

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

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

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

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

25 (15) If a bank or savings association, as defined in
26 s. 220.62, acts as a fiduciary or agent of a trust other than
27 as a trustee, the bank or savings association is not
28 responsible for returning the trust's intangible personal
29 property and is not required to pay any annual tax on it, and
30 ~~intangible personal property of the trust shall not have~~
31 ~~taxable situs in this state pursuant to s. 199.175 solely by~~

1 ~~virtue~~ of the management or control of the bank or savings
2 association may not be used as the basis for imposing any
3 annual tax on any person or any assets of the trust. If a
4 person acts as a fiduciary or agent for purposes of managing
5 intangible assets owned by another person, such intangible
6 assets shall not have a taxable situs in this state pursuant
7 to s. 199.175 solely by virtue of the management or control of
8 such assets by the person who is not the owner of the assets.

9 Section 6. Paragraph (a) of subsection (1) of section
10 199.175, Florida Statutes, is amended to read:

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

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

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

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

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

7 3. Any person, including a business trust, who has
8 established a commercial domicile in this state.

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

11 199.183 Taxpayers exempt from annual and nonrecurring
12 taxes.--

13 (4) Intangible personal property that is owned,
14 managed, or controlled by a trustee of a trust is exempt from
15 annual tax under this chapter. This exemption does not exempt
16 from annual tax a resident of this state who has a taxable
17 beneficial interest, as defined in s. 199.023, in a trust.

18 Section 8. This act shall take effect July 1, 2000,
19 and apply to tax years beginning after December 31, 2000.

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21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 SB 60

24 The committee substitute amends various sections of chapter
25 199 to provide that intangible personal property tax will not
26 be imposed upon intangible personal property owned by a
27 non-resident simply because the property is managed or
28 controlled by a person domiciled in Florida. It relieves
29 Florida trustees of trusts and investment advisors of the
30 responsibility of returning and paying intangibles tax on
31 assets they control.