

STORAGE NAME: h0067s1z.ft
DATE: June 6, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-173, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
FINAL ANALYSIS**

BILL #: CS/HB 67 and 187
RELATING TO: Intangible Personal Property Taxes
SPONSOR(S): Committee on Finance & Taxation, Representatives Fasano, Starks, and others
TIED BILL(S): None

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

- (1) FINANCE AND TAXATION (FRC) YEAS 14 NAYS 1
 - (2) GENERAL APPROPRIATIONS (FRC) WITHDRAWN
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

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

- The intangible tax rate is lowered from 1.5 mills to 1 mill;
- To retain the inducement for investing in the Florida's Future Investment funds, the intangible tax rate for investment in the funds is lowered from 1.35 mills to .85 mills when the average daily balance in the funds exceeds \$2 billion and from 1.2 mills to .70 mills when the average daily balance exceeds \$5 billion; and
- The value of accounts receivable is exempted from intangible tax.

The bill also revises the treatment of Florida trusts for intangible tax purposes. It relieves Florida trustees of paying intangible tax on trust assets, and it provides that a Florida resident with a beneficial interest in a trust is responsible for reporting his or her share of the trusts assets and paying any intangible tax due.

Changes to the intangible tax law will be effective for tax years beginning after December 31, 2000.

The bill repeals the sharing of intangible tax revenues with the counties. The bill provides that an additional 2.25 percent of the available proceeds shall be transferred from sales and use tax collections to the Revenue Sharing Trust Fund for Counties.

The bill gives additional assurances to holders of bonds issued before April 18, 2000, which are secured by the guaranteed entitlement or second guaranteed entitlement for counties, or bonds issued to refund such bonds which mature no later than the bonds that they refunded and which result in a reduction of debt service payable in each fiscal year.

The estimated fiscal impact upon General Revenue is (\$202.3) million for FY 00-01 and (\$252.7) million for FY 01-02. The estimated fiscal impact upon local governments is (\$40.2) million for FY 00-01 and (\$32.3) million for FY 01-02. The total estimated fiscal impact for this bill is (\$242.5) million for FY 00-01 and (\$285.0) million for FY 01-02.

This bill is a mandate and must pass both houses of the Legislature by a two-thirds vote.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

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. Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. Section 199.023, F.S.

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. The tax must be paid by all corporations that own, control, or manage intangible personal property that has a taxable situs within the state. Section 199.052(1), F.S.

The tax rate is capped at 2 mills by Article VII, Section 2, of the Florida Constitution. The current tax rate is 1.5 mills (\$1.50 per \$1,000 of value). Section 199.032, F.S.

The intangible tax rate was increased from 1 mill to 1.5 mills in 1990 and increased to 2 mills in 1992. The rate was lowered from 2 mills to 1.5 in 1999.

Chapter 98-132, Laws of Florida, exempted from intangible tax one-third of the value of accounts receivable. The law expressed the legislative intent to increase the exemption for accounts receivable to two-thirds on January 1, 2000, and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action. In 1999, the exemption for accounts receivable was increased to two-thirds. 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. 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.

The taxable situs of intangible personal property is defined at s. 199.175(1), F.S. In general,

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

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

1. Any natural person who is a legal resident of this state;
2. Any bank or financial institution, business, business trust as described in chapter 609, company, corporation, insurance company, partnership, or other artificial entity organized or created under the law of this state, except a trust;¹ or
3. Any person, including a trust, who has established a commercial domicile in this state.

A Florida resident is required to pay the intangible personal property tax regardless of where the resident's asset manager is physically located. Additionally, if a non-resident hires a Florida asset manager to manage the account (i.e., to trade securities), that discretion constitutes "control" over the assets sufficient to require Florida taxation on the assets, according to the Department of Revenue. It is believed that non-residents may be less likely to seek the services of a Florida asset manager if to do so triggers a tax consequence not imposed in other states.

For instance, Bank A, a Florida institution, operates as a trustee for a trust whose beneficiaries live in Florida, Georgia, and Alabama. Bank A pays the intangible personal property tax on the assets of the trust to the Department of Revenue 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 personal property tax on the assets of the trust, however, the Florida beneficiary must pay intangible tax on his or her beneficial interest in the foreign trust.

As to trusts, s. 199.052(5), F.S., provides that the trustee of a Florida-situs trust is primarily responsible for returning the trust's intangible personal property and paying the annual tax. The section further provides that a trust has a Florida situs when all trustees are residents of the state; there are three or more trustees sharing equally in the ownership, management, or control of the trust's intangible property, and the majority of the trustees are residents of this state; or trustees consist of both residents and nonresidents and

¹ As of July 1, 2000, this subparagraph will read: "Any business, business trust as described in chapter 609, company, corporation, partnership, or other artificial entity organized or created under the law of this state, except a trust; or".

management or control of the trust is with a resident trustee. When trustees consist of both residents and nonresidents and management or control is with a nonresident trustee, the trust does not have Florida situs and no return is necessary by any resident trustee. A portion of the trust has Florida situs when there are two trustees, one a resident of this state and one a nonresident, and they share equally in the ownership, management, or control of the trust's intangible property. The tax on such property shall be based on the value apportioned between them. If there is more than one trustee in the state, only one tax return for the trust must be filed. The trust's beneficiaries, however, may individually return their equitable shares of the trust's intangible personal property and pay the tax on such shares, in which case the trustee need not return such property or pay such tax, although the Department of Revenue may require the trustee to file an informational return.

Section 199.052(9), F.S., provides that, where an agent has control or management of intangible personal property, the principal is primarily responsible for returning such property and paying the annual tax on it, but the agent shall return such property on behalf of the principal and pay the annual tax on it if the principal fails to do so. Although the section does not specifically state that a trustee of a trust is an agent, the general law of agency holds that a trustee is an agent of the principal.

Section 199.052(15), F.S., provides that if a bank or savings association acts as a fiduciary or agent of a trust other than as a trustee, intangible personal property of the trust shall not have taxable situs in this state pursuant to s. 199.175, F.S., solely by virtue of the management or control of the bank or savings association.

Section 199.183, F.S., provides that certain taxpayers are exempt from the annual intangible personal property tax.

Section 199.023, F.S., is the definition section in Chapter 199, F.S. Section 199.023(7), F.S., provides that a "resident has a 'beneficial interest' in a foreign trust if the resident has a vested interest, even if subject to divestment, which includes at least a current right to income and either a power to revoke the trust or a general power of appointment, as defined in 26 U.S.C. s. 2041(b)(1)." A "general power of appointment" is defined by 26 U.S.C. § 2041(b)(1) as "a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment."²

²There are other limited situations that are not considered a general power of appointment: A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment; or in the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person, (i) If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment. (ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power. (iii) If, after the application of clauses (i) and (ii), the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons, including the decedent, in favor of whom such power is exercisable. For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

Chapter 658, F.S., relates to "Banks and Trust Companies." "Trust business" is defined therein as the business of acting as a fiduciary.³ Section 658.12(8), F.S., defines fiduciary to mean 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 in popularity as an estate planning vehicle.

The Florida Revenue Sharing Act of 1972 created the Revenue Sharing Trust Fund for Counties. Currently, the trust fund receives 2.9 percent of net cigarette tax collections and 37.7 percent of net intangible tax collections. An allocation formula serves as the basis for the distribution of these revenues to each county that meets strict eligibility requirements.

There are no use restrictions on these revenues; however, there are some statutory limitations regarding funds that can be used as a pledge for indebtedness. Pursuant to s. 218.25(1), F.S., counties are allowed to bond their guaranteed entitlement. This "hold harmless" provision guarantees a minimum allotment in order to insure coverage of all bonding obligations for those eligible counties that qualified for revenue sharing dollars prior to July 1, 1972. Section 218.21(6), F.S., defines the guaranteed entitlement to mean the amount received in the aggregate from the state in fiscal year 1971-72 under the provisions of the then existing tax on cigarettes, road tax, and intangibles tax. Pursuant to s. 218.25(2), F.S., a second guaranteed entitlement may also be assigned, pledged, or set aside as a trust for the payment of principal and interest on bonds, tax anticipation certificates, or any other form of indebtedness. Section 218.21(10), F.S., defines the second guaranteed entitlement as the amount of revenue received in the aggregate by an eligible county in fiscal year 1981-82 under the then existing tax on cigarettes and intangible tax less the guaranteed entitlement.

The intangible tax, which represented 96 percent of total distributions under the County Revenue Sharing program in fiscal year 1996-97, has kept pace with inflation and statewide population growth. However, during the 1999 Legislative Session, the Legislature enacted Chapter 99-242, L.O.F., to reduce the intangible tax rate from 2 mills to 1.5 mills. Although this reduction created a significant fiscal impact for county governments, reductions in county government contributions to the State Retirement System enacted in Chapter 99-392, L.O.F., served to offset this negative fiscal impact for all counties but Duval County, which does not participate in the State Retirement System. To address Duval County's situation, Chapter 99-239, L.O.F., created s. 218.251, F.S., providing that beginning in fiscal year 1999-2000, an additional distribution in the amount of \$6.24 times the population shall be annually appropriated to any consolidated government, as provided by Article VIII, Section 3, of the State Constitution. Duval County is the only county meeting this definition and the additional requirement that the consolidation must have occurred prior to January 1, 1999.

Section 218.25, F.S. provides certain assurances to holder of bonds issued by local governments prior to July 1, 1972.

³Section 658.12(20), F.S.

C. EFFECT OF PROPOSED CHANGES:

The intangible tax rate is lowered from 1.5 mills to 1 mill. To retain the inducement for investing in the Florida's Future Investment funds, the intangible tax rate for investment in the funds is lowered from 1.35 mills to .85 mills when the average daily balance in the funds exceeds \$2 billion and from 1.2 mills to .70 mills when the average daily balance exceeds \$5 billion.

The bill exempts the value of accounts receivables from intangible tax.

This bill removes reference to "Florida-situs trust", and makes trustees exempt from paying intangible personal property tax and from all the requisite filing requirements. With regard to a Florida resident with a "beneficial interest" in a trust, the requirement that the trust situs (location) be outside the state is removed. Accordingly, any Florida resident with a "beneficial interest" in a trust, irrespective of whether the location of the trust is inside or outside of Florida, is responsible for paying any annual tax. Furthermore, as a result of these changes, an intangible personal property tax will not be imposed upon intangible personal property owned by a non-resident simply because the property is managed or controlled by a person domiciled in Florida.

This bill further provides that 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. 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.

This bill also excludes a trust commercially domiciled in the state from the payment of annual intangible personal property tax.

The bill repeals the sharing of intangible tax revenues with the counties. The bill provides that an additional 2.25 percent of the available proceeds shall be transferred from sales and use tax collections to the Revenue Sharing Trust Fund for Counties. The bill also increases the amount of sales and use tax proceeds distributed to the Local Government Half-cent Sales Tax Clearing Trust Fund for the emergency distribution from 0.054 percent to 0.065 percent.

Section 218.25, F.S., is amended to add additional assurances to holders of bonds issued before April 18, 2000, which are secured by the guaranteed entitlement or second guaranteed entitlement for counties, or bonds issued to refund such bonds which mature no later than the bonds that they refunded and which result in a reduction of debt service payable in each fiscal year. The intent of the Legislature is that, to the extent the elimination of tax sources dedicated to funding the guaranteed entitlement or the second guaranteed entitlement for counties or a reduction in the rate of assessment of such taxes results in an inability of a county to pay debt service on such bonds, the Legislature will provide alternative funding sources in an amount sufficient to pay any deficit in the amount required for such debt service. This commitment of the Legislature is contingent on the county first using any funds available under this part for the payment of such debt service.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 199.023, F.S., to redefine “beneficial interest” so that the definition would apply to a resident with a vested interest in any trust rather than just in a foreign (out-of-state) trust.

Section 2 amends s. 199.032, F.S., to lower the intangible tax rate from 1.5 mills to one mill.

Section 3 amends s. 199.933(1), F.S., to lower the intangible tax rate for investment in the Florida’s Future Investment funds from 1.35 mills to .85 mills when the average daily balance in the funds exceeds \$2 billion and from 1.2 mills to .70 mills when the average daily balance exceeds \$5 billion.

Section 4 amends s. 199.052, F.S., to exempt a trustee from paying annual tax on trust property, and provides that if a bank or savings association acts as a fiduciary or agent of a trust other than as a trustee, the bank or savings association is not responsible for paying any annual tax on the trust’s intangible personal property. This section further provides that management or control of the bank or savings association may not be used as the basis for imposing any annual tax on any person or any assets of the trust; it removes language that requires a Florida resident with a beneficial interest in a trust to pay the annual tax on the trust only if it is a “foreign-situs” trust, thus making the beneficiary responsible for payment of the intangible personal property tax irrespective of whether the trust is a “foreign-situs” trust or a “Florida-situs” trust.

Section 5 amends s. 199.175, F.S., to provide that a business trust commercially domiciled in the state is responsible for the payment of annual intangible personal property tax.

Section 6 amends s. 199.183, F.S., to provide that intangible personal property owned, managed, or controlled by a trustee of a trust is exempt from the annual tax.

Section 7 amends s. 199.185(1), F.S., to exempt accounts receivable from intangible tax.

Section 8 amends s. 199.292(3), F.S., to repeal the sharing of intangible tax revenues with the counties.

Section 9 amends s. 212.20(6)(f), F.S., to provide that for the proceeds received after July 1, 2000, an additional 2.25 percent of the available proceeds shall be transferred from sales and use tax collections to the Revenue Sharing Trust Fund for Counties. The amount of sales and use tax proceeds distributed to the Local Government Half-cent Sales Tax Clearing Trust Fund for the emergency distribution to certain counties is increased from 0.054 percent to 0.065 percent.

Section 10 amends s. 218.23, F.S., to make the annual appropriation to a consolidated government provided for in s. 218.251, F.S., a part of the revenue sharing distribution.

Section 11 amends s. 288.1169(6), F.S., to conform a cross-reference.

Section 12 amends s. 218.25, F.S., F.S, to add additional assurances to holders of bonds issued before April 18, 2000, which are secured by the guaranteed entitlement or second guaranteed entitlement for counties, or bonds issued to refund such bonds which mature no

later than the bonds that they refunded and which result in a reduction of debt service payable in each fiscal year.

Section 13 repeals s. 218.251, F.S., to conform to the amendment of s. 218.23, F.S.

Section 14 provides that the Act shall take effect on July 1, 2000.

Note: Sections 1 through 7 are effective for tax years beginning after December 31, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

<u>.5 mill reduction</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$131.0M)	(\$154.3M)
Local	(\$79.2M)	(\$93.4M)
<u>Accounts receivable</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$11.5M)	(\$13.5M)
Local	(\$7.0M)	(\$8.1M)
<u>Trustees</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$8.6M)	(\$9.8M)
Local	(\$5.2M)	(\$5.9M)
<u>Revenue Sharing</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$51.2M)	(\$75.1M)
Local	\$51.2M	\$75.1M
<u>TOTAL</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$202.3M)	(\$252.7M)
Local	(\$40.2M)	(\$32.3M)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III.A.1.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Both businesses and individuals will have lower taxes due to the reduction in tax rate and exemption of accounts receivable from intangible tax. Financial services industries may receive an indirect economic benefit if they capture more trust business because the trust properties are no longer subject to the annual intangible personal property 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 the trustee.

D. FISCAL COMMENTS:

None.

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:

The bill will reduce the amount of state tax shared with municipalities by eliminating the counties share of intangible tax. Even though the Legislature is providing additional state-shared revenues from General Revenue, the replacement revenue is not anticipated to be sufficient to replace the anticipated aggregate loss. This bill is a mandate and must pass both houses of the Legislature by a two-thirds vote.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

Alan Johansen