

STORAGE NAME: H0009C.fpr.doc
DATE: November 27, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FISCAL POLICY AND RESOURCES
ANALYSIS**

BILL #: H0009c
RELATING TO: Intangible Tax
SPONSOR(S): Representative(s) Detert

TIED BILL(S):

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

- (1) FISCAL POLICY AND RESOURCES
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill amends s. 1 of ch. 2001-255, Laws of Florida. The bill delays the effective date of an increase for natural persons in the exempt value of property subject to the intangibles tax and the grant to taxpayers who are not natural persons of an exemption of a certain amount of the value of property subject to the tax. This bill provides for retroactive operation under certain circumstances and provides an effective date.

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 type="checkbox"/> | No <input checked="" 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:

The Legislature enacted Chapter 199, F.S., to implement the separate intangible tax system. It 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." Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. Until 1931, intangible property was assessed and taxed as part of the mass of property subject to ad valorem property taxes levied by local governments.

The intangible tax is paid annually and is based on the value of assets as of January 1. The return is due by June 30, with discounts for early payment. 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. The tax must be paid by all corporations that own, control, or manage intangible personal property that has a taxable situs (location) within the state.

The tax rate is capped at 2 mills by Article VII, Section 2, of the Florida Constitution. The current tax rate is one mill (\$1.00 per \$1,000 of value).

The intangible tax rate was increased from 1 mill to 1.5 mills in 1990 and increased to two mills in 1992. The rate was lowered from two mills to 1.5 mills in 1999, and further lowered from 1.5 mills to 1.0 mill in 2000.

Chapter 98-132, L.O.F., exempted from the annual intangible tax one-third of the value of accounts receivables. In 1999, the exemption for accounts receivables was increased to two-thirds. Accounts receivables were completely exempted per Ch. 2000-173, L.O.F. The term "accounts receivables" is defined as "a business debt that 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." Accounts receivables 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 does not apply to accounts receivables that 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., which states that:

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

Chapter 2000-173, L.O.F., was enacted to remove the reference to Florida-situs trust. Trustees are exempt from paying intangible personal property tax and are exempt 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 be outside the state was 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. As a result, intangible personal property taxes are no longer imposed upon intangible personal property owned by a non-resident simply because the property is managed or controlled by a person domiciled in Florida.

Banks or savings associations acting as a fiduciary or agent of a trust, other than as a trustee, are no longer 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.

A trust commercially domiciled in the state is now excluded from the payment of annual intangible personal property tax.

The sharing of intangible tax revenues with the counties was repealed, and now 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 was increased from 0.054 percent to 0.065 percent.

Section 218.25, F.S., was 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 Part II of Ch. 218, F.S., for the payment of such debt service.

Last year, the Legislature enacted Chapter 2001-225, L.O.F. The relevant changes of that act are discussed below.

Property exempted from the annual intangibles tax was increased from \$20,000 to \$250,000 for every natural person and from \$40,000 to \$500,000 for a husband and wife filing jointly.

Every taxpayer that is not a natural person is also entitled each year to an exemption of the first \$250,000 of taxable value.

The effective date of this act is January 1, 2002.

C. EFFECT OF PROPOSED CHANGES:

The bill changes the effective date for the changes in the intangibles tax exemption in Chapter 2001-225, L.O.F., to July 1, 2003.

D. SECTION-BY-SECTION ANALYSIS:

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 01-02	FY 02-03
General Revenue Fund (nonrecurring)	\$128.0 M	\$159.5 M

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers, both businesses and individuals, subject to the annual intangible tax will have lower tax liability as a result of this legislation.

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 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

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