SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 26, 1998 Revised: ________ ________ ________ ________

Subject: Intangible Personal Property Taxes

	Analyst	Staff Director	Reference	Action
1.	Fournier	Smith	WM	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

The committee substitute makes numerous changes to the intangible tax:

- It raises the minimum amount of tax due before a return and payment are required from $5 to $60 dollars.
- It provides a definition for “accounts receivable” and, beginning January 1, 1999, one-third of accounts receivable are exempted from the intangible tax. The bill expresses the intent of the Legislature to increase the exempt amount to two-thirds on January 1, 2000, and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action.
- Banks, savings associations and insurance companies would be exempted from intangible tax for taxes due on or after July 1, 1999. Additionally, the credits for intangible tax paid which are given to banks, savings associations, and insurers are repealed for tax years beginning on or after December 31, 1999.
- Penalties for late filing, and late payment are capped at a combined total of no more than 10 percent per month and no more than 50 percent of the total tax due. The penalty for under reporting and undervaluation is reduced from 30 percent to 10 percent.
- The revenue sharing of funds between the counties and the state is modified.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 199.023, 199.052, 199.175, 199.185, 199.104, 199.282, 199.292, 220.02, 220.68, and 624.509.

II. Present Situation:

Florida’s intangible tax was enacted in 1931 and 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.” s. 199.023, F.S. Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. s. 199.023, F.S. The term "accounts receivable" is not defined by statute. Florida Administrative Code Rule 12C-2.002(1)(a) defines accounts receivable as "a debt which is owed by another which is not supported by a negotiable paper." Certain intangible personal property is exempt from the tax. Examples of exempt property include money, franchises, general partnership interests and retirement accounts. Real estate mortgage investment conduits are exempt if held by banks or sevings associations in compliance with regulatory agency guidelines. s. 199.185, F.S. The intangible tax has two parts: the annual and the nonrecurring. Only the annual tax, which is the subject of this bill, will be discussed.

The tax is paid annually and is based on the value of assets as of January 1. s. 199.103, F.S. The return is due by June 30th with discounts for early payment. s. 199.042, F.S. The tax is paid by all "persons" which includes 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. s. 199.03(3), F.S. The tax must be paid by all corporations who own, control, or manage intangible personal property which has a taxable situs within the state. s. 199.052(1), F.S. The terms "control" or "manage" do not include any ministerial function or any processing activity. s. 199.052(1), F.S. The terms "ministerial function" and "processing activity" are not defined by statute.

A Florida domiciled trustee is required to pay intangible tax on the assets held in trust since the trustee has management and control of the assets. Florida domiciled beneficiaries also must pay the intangible tax if they own a taxable beneficial interest in a trust. If the trustee has filed a return and paid the tax, the beneficiary is not required to file a return. s. 199.052(5), F.S. If an investment advisor has management or control over assets the advisor does not own, the assets held in Florida are subject to intangible tax.

The tax rate is capped at 2 mills by the Florida Constitution, s. 2, Art. VII. The current tax rate is 2 mills ($2 per $1,000 of value). s. 199.032, F.S. Banks and savings associations are exempt from .5 mill; therefore, having a tax rate of 1.5 mills. s. 199.185(5), F.S. With respect to the first mill of the annual tax, every natural person is entitled each year to an exemption of the first $20,000 of the value of property otherwise subject to said tax. A husband and wife filing jointly shall have an exemption of $40,000. With respect to the last mill of the annual tax, every natural person is entitled each year to an exemption of the first $100,000 of the value of property otherwise subject to said tax. A husband and wife filing jointly shall have an exemption of $200,000. s. 199.185(2), F.S. "Non-natural" persons, such as corporations, do not receive these exemptions.

Banks, savings associations, and insurance companies receive credits for the intangible tax they pay. Any bank or savings association, as defined is s. 220.62, F.S., is entitled to a credit against the intangible tax in an amount equal to 33 percent of the tax paid in the immediately preceding taxable year less the credit allowed by s. 220.68, F.S., (corporate income tax) for such bank or savings association for such year. s. 199.104, F.S. Banks and savings associations are also given a credit against their corporate income tax equal to the lesser of 100 percent of intangibles tax paid or 65 percent of corporate tax liability. s. 220.68, F.S. Insurance companies are given a credit against their insurance premium tax for intangible tax paid. s. 624.509(4), F.S.

If any individual or entity owes less than $5 in tax, no tax and no return are due. s. 199.052(4), F.S. Corporations must file annual informational returns even if they have no intangible tax liability. s 199.062, F.S.

If the intangible tax is not paid by the due date, the delinquency penalty is 10 percent of the delinquent tax for each calendar month or portion thereof from the due date until paid, up to a limit of 50 percent of the total tax not timely paid. If the tax return required is not filed by the due date, a penalty of 30 percent of the tax due with the return is charged for each year or portion of the year during which the return remains unfiled. s. 199.282, F.S. These penalties are additive. If a tax return is filed and property is either omitted or undervalued, then a specific penalty shall be charged of 30 percent of the tax attributable to each omitted item or to each undervaluation. No delinquency or late filing penalty shall be charged with respect to any undervaluation. s. 199.282, F.S.

Revenues from the intangible tax are shared between the state and the counties. After administrative expenses, the counties receive 33.5 percent and the state receives 66.5 percent of the revenues. s. 199.292(3), F.S.

III. Effect of Proposed Changes:

The tax must be paid by all corporations who own, control, or manage intangible personal property which has a taxable situs within the state. s. 199.052(1), F.S. The terms “control” or “manage” do not include any ministerial function or any processing activity. s. 199.052(1), F.S. The bill amends s. 199.023, F.S., by adding definitions for “ministerial function” and “processing activity.”

“Ministerial function” is defined to mean “an act the performance of which does not involve the use of discretion or judgment.”

“Processing activity” is defined to mean “an activity undertaken to administer or service intangible personal property in accordance with such terms, guidelines, criteria, or directions as are provided solely by the owner of the property. Methods, systems, or techniques chosen by the processor to implement such terms, guidelines, criteria, or directions are not considered the exercise of management or control.”

The bill amends s. 199.052, F.S., by raising the minimum amount of tax due before a return and payment are required from $5 to $60 dollars. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change. An individual who owned on January 1 less than $80,000 in taxable assets would not have to pay intangible tax or file a return. For a couple filing jointly, they would not have to pay intangible tax or file a return if they owned less than $100,000 in taxable assets. A business or other “non-natural person” would not have to pay the tax, and in certain cases file a return, if it owned, manage, or controlled less than $30,000 in taxable assets.

Section 199.185, F.S., contains a listing of property exempted from intangible tax. Section 199.185 (l), F.S., is added to exempt one-third of accounts receivable from the intangible tax beginning January 1, 1999. The bill expresses the intent of the Legislature to increase the exempt amount to two-thirds on January 1, 2000, and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action. “Accounts receivable” are defined as “a business debt which is owed by another in the taxpayer’s ordinary course of trade or business and is not supported by negotiable instruments.” 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, and 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. These examples are deemed not to be supported by negotiable instruments, which means written documents legally capable of being transferred by indorsement or delivery. The exemption does not apply to accounts receivable which arise outside the taxpayer’s ordinary course of trade or business.

Paragraph (k) of subsection (1) of s. 199.185, F.S., is amended to make interests in real estate securitizations exempt from intangibles tax. These include, but are not limited to, real estate mortgage investment conduits (REMICs) and financial asset securitization trusts (FASITs). Such instruments must be secured solely by mortgages, deeds of trust, or other liens upon real property.

Section 199.185(5), F.S, is amended to make banks and savings associations, as defined in s. 624.03, F.S., exempt from intangible tax for taxes due on or after July 1, 1999. Sections 199.104 and 220.68, F.S., which provided credits described in section II. A. are repealed for tax years beginning after December 31, 1999.

Section 199.185(8), F.S., makes insurers, as defined in s. 624.03, F.S., exempt from the intangible tax for taxes due on or after July 1, 1999. The credit an insurer received for intangible tax against its insurance premium tax is repealed for tax years beginning after December 31, 1999.

Section 199.282, F.S., is amended to reduce the penalty for late payment, late filing, and under reporting and undervaluation. The penalties for late pavement and late filing will be limited to a total of 10 percent per month and 50 percent of the total tax due. The penalty for under reporting and undervaluation will be reduced from 30 percent to 10 percent. Presently the penalties could be up to 110 percent of the tax due.

Revenues from the intangible tax are shared between the state and the counties. After administrative expenses, the counties will receive 35.3 percent in 1998-99 and 37.7 percent each year thereafter. These percentages are intended to fully hold counties harmless from the revenue consequences of this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is exempt from the provisions under subsection (b) of s. 18, Art. VII, State Constitution, which require a two-thirds vote of the membership of each house in order to enact a general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill will have the following revenue impact:

	General Revenue		Trust		Local		Total	
Issue/Fund	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Raise Minimum Tax	($9.5)	($9.5)	$0	$0	$0	$0	($9.5)	($9.5)
Acc’ts Rec. Exempt.	($40.1)	($40.1)	$0	$0	$0	$0	($40.1)	($40.1)
Banks’ Exemption	$0	($49.1)	$0	$0	$0	$0	$0	($49.1)
Insurance Cos.’ Exemption	$0	($13.2)	$0	$0	$0	$0	$0	($13.2)
Reduction in Penalties	($2.1)	($2.1)	$0	$0	$0	$0	($2.1)	($2.1)
CIT Credit Repeal	$0	$46.2	$0	$0	$0	$0	$57.8	$46.2
Premium Tax Credit Repeal	$0	$8.6	$0	$0	$0	$0	$0	$8.6
REMICs and FASITs	see (1)							0
Total Impact	**($51.7)**	**($59.2)**	**$0**	**$0**	**$0**	**$0**	**($51.7)**	**($59.2)**

(1) Revenue estimate not available.

In addition, due to the 1-year lag in the claiming of intangibles tax credits, the repeal of the tax on banks and insurance companies will result in a one-time reduction in General Revenue of $61.9 million in fiscal year 1999-2000.

B. Private Sector Impact:

The bill raises the minimum amount of tax due before a return and payment are required from $5 to $60 dollars. The Department of Revenue estimates that over 250,000 fewer taxpayers, both businesses and individuals, would have to pay intangible tax as a result of this change.

Banks, savings associations, and insures would no longer have to pay intangible tax for taxes due on or after July 1, 1999. Even though these entities received an offsetting tax credit against corporate income tax or insurance premium tax for most of these taxes, these taxpayers will be saved accounting and other related costs by no longer having to pay the intangible tax.

Both businesses and individuals will have lower taxes due to the exemption of accounts receivable from intangible tax.

C. Government Sector Impact:

The provisions of this act should cause no administrative difficulties for state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.