

STORAGE NAME: s0318s1z.ft
DATE: June 10, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

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

BILL #: CS/SB 318, 2nd Eng.
RELATING TO: Intangible Personal Property Taxes
SPONSOR(S): Committee on Fiscal Resources and Senator Lee
COMPANION BILL(S): Compare HB 1943
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1)
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

On June 8, 1999, the bill was signed by the Governor and became law (Chapter 99-242, Laws of Florida).

II. SUMMARY:

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

- The intangible tax rate is lowered from 2 mills to 1.5 mills;
- The intangible tax rate for investments in Florida's Future Investment Funds is lowered from 1.85 mills to 1.35 mills when the average daily balance in the funds exceeds \$2 billion and from 1.70 mills to 1.2 mills when the average daily balance exceeds \$5 billion;
- The exemption from intangible tax on the value of accounts receivables is raised from one-third to two-thirds; and,
- Limited liability companies can file consolidated intangible tax returns as members of an affiliated group.

The total estimated fiscal impact upon General Revenue is (\$165.2) million for FY 99-2000 and (\$168.8) million for FY 2000-2001. The estimated fiscal impact upon local governments is (\$99.9) million for FY 1999-2000 and (\$102.1) for FY2000-2001. The total estimated fiscal impact for this bill is (\$265.1) million for FY 1999-2000 and (\$270.9) million for FY 2000-2001.

III. SUBSTANTIVE ANALYSIS:

A. 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. (1998 Supp.) Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. Section 199.023, F.S. (1998 Supp.)

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. (1998 Supp.) 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. (1998 Supp.)

The tax rate is capped at 2 mills by Article VII, Section 2 of the Florida Constitution. The current tax rate is 2 mills (\$2 per \$1,000 of value). Section 199.032, 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 the tax. A husband and wife filing jointly receive an exemption of \$40,000. With respect to the second mill of the annual tax, every natural person is entitled to an exemption of the first \$100,000 of the value of property otherwise subject to the tax. A husband and wife filing jointly have an exemption of \$200,000. Section 199.185(2), F.S. "Non-natural" persons, such as corporations, do not receive these exemptions.

The intangible tax rate was increased from 1 mill to 1.5 mills in 1990 and increased to 2 mills in 1992. The \$20,000/\$40,000 exemption from the first mill became effective in 1972 and has not been increased since then.

Last year, SB 1450, which became law without the Governor's signature on May 22, 1998 (Chapter 98-132, Laws of Florida), made several changes to the intangible tax law. Among these changes, the minimum amount of tax due from a taxpayer increased from \$5 to \$60. The Department of Revenue estimates that more than 250,000 taxpayers, both businesses and individuals, will not have to pay intangible tax as a result of this change. In effect, an individual who on January 1, owned less than \$80,000 in taxable assets will not have to pay intangible tax or file a return, up from \$25,000. A couple filing jointly will not have to pay intangible tax or file a return if they owned less than \$100,000 in taxable assets, up from \$45,000. A business or other "non-natural person" will not have to pay the tax if it owned, managed, or controlled less than \$30,000 in taxable assets.

Chapter 98-132, Laws of Florida, also exempts from intangible tax one third of accounts receivable. The bill expresses 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. 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. (1998 Supp.) 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 Florida Limited Liability Company Act of 1982 created the limited liability company (LLC) in Florida. A limited liability company is an entity with characteristics of both a corporation and a partnership. For legal purposes, an LLC is treated like a corporation and therefore affords its members certain protections from liability. For federal income tax purposes, however, an LLC may be classified as a partnership, in which case the earnings or losses of the LLC are passed through to the members, rather than treating the LLC as a separate taxable entity. The Florida Limited

Liability Company Act was enacted, in part, to attract capital to Florida by offering limited liability in conjunction with federal tax advantages.

Section 220.02, F.S. (1998 Supp.) states that a limited liability company classified as a partnership for federal income tax purposes and formed under ch. 608, F.S., or qualified to do business in this state as a foreign LLC is not subject to Florida's corporate income tax. Chapter 98-101, s. 7, Laws of Florida, became law on May 21, 1998, and is effective for tax years beginning on or after January 1, 1997.

Presently, an affiliated group of corporations may elect to make a consolidated intangible tax return for any year. The election is made by timely filing a consolidated return. Once made, an election may not be revoked, and is binding for the tax year. An "affiliated group of corporations" means one or more chains of corporations connected through stock ownership with a common parent corporation, providing that:

(a) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each corporation, except for the common parent corporation, is owned directly by one or more of the other corporations; and

(b) The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other corporations.

By making the election to file a consolidated return, affiliated corporations do not have to pay intangible tax on investments in one member of the group by others in the group.

The Florida Education Technology Foundation, a not-for-profit corporation which is funded through Florida's Future Investment Funds, was created in 1997. Chapter 97-188, Laws of Florida. Florida's Future Investment Funds are state sponsored funds for private investments. The act was designed to allow business to invest and become involved in Florida's educational process. A portion of the earnings from investments made in Florida's Future Investment Funds must be contributed to the Florida Education Technology Foundation. The investor, not the state nor the foundation, retains ownership of the initial investment principal. As an inducement for investing in the fund, the assets are taxed at a lower intangible tax rate. When the average daily balance in the Florida's Future Investment Fund exceeds \$2 billion, the intangible personal property tax rate is reduced from 2 mills to 1.85; when it exceeds \$5 billion, the rate drops to 1.70.

B. EFFECT OF PROPOSED CHANGES:

The intangible tax rate is lowered from 2 mills to 1.5 mills. 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 1.85 mills to 1.35 mills when the average daily balance in the funds exceeds \$2 billion and from 1.70 mills to 1.2 mills when the average daily balance exceeds \$5 billion.

The bill raises the exemption from intangible tax on the value of accounts receivables from one-third to two-thirds.

The bill allows an affiliated group of limited liability companies to file a consolidated intangible tax return. Related limited liability companies and corporations with common ownership no longer have to pay intangible tax on shares or membership interests owned by members of the group.

The act will take effect on January 1, 2000.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

Yes.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
N/A
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
N/A
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
N/A
 - (2) Who makes the decisions?
N/A
 - (3) Are private alternatives permitted?
N/A
 - (4) Are families required to participate in a program?
N/A
 - (5) Are families penalized for not participating in a program?
N/A
- b. Does the bill directly affect the legal rights and obligations between family members?
N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 199.023; 199.032; 199.052; 199.185, F.S

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends subsection (8) of s. 199.023, F.S. (1998 Supp.), to define "affiliated group" to also mean one or more chains of corporations or limited liability companies connected through stock ownership or membership interest in a limited liability company with a common parent corporation or a limited liability company, providing that:

(a) Stock or membership interest in a limited liability company possessing at least 80 percent of the voting power of all classes of stock or membership interest in a limited liability company, and at least 80 percent of each class of the nonvoting stock or membership interest in a limited liability company of each corporation or limited liability company, except for the common parent corporation, is owned directly by one or more of the other corporations; and

(b) The common parent corporation or limited liability company directly owns stock or membership interest in a limited liability company possessing at least 80 percent of the voting power of all classes of stock or membership interest in a limited liability company and at least 80 percent of each class of the nonvoting stock of at least one of the other corporations or limited liability company.

For the purposes of Chapter 199, the common parent may be a corporation or a limited liability company.

Section 2 amends subsection (1) of s. 199.033, F.S., to lower the intangible tax rate for investment in Florida's Future Investment Funds from 1.85 mills to 1.35 mills when the average daily balance in the funds exceeds \$2 billion and from 1.70 mills to 1.20 mills when the average daily balance exceeds \$5 billion.

Section 3 amends subsection 10 of s. 199.052, F.S. (1998 Supp.) to specify additional conditions for an affiliated group to file a consolidated intangible tax return.

Section 4 amends s. 199.032, F.S., to reduce the intangible tax rate from 2 mills to 1.5 mills.

Section 5 amends paragraph (1) of subsection (1) of s. 199.185, F.S. (1998 Supp.) to raise the exemption for accounts receivables from one-third to two-thirds.

Section 6 provides an effective date of January 1, 2000.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

| Issue | General Revenue | | Local | | Total | |
|-----------------------------|-----------------|----------|---------|----------|----------|----------|
| | 1999-00 | 00-01 | 1999-00 | 00-01 | 1999-00 | 00-01 |
| Exempt 1/3 Accounts Re. | (20.70) | (20.70) | (12.50) | (12.50) | (33.20) | (33.20) |
| Reduce Rate | (144.30) | (147.90) | (87.30) | (89.50) | (231.60) | (237.40) |
| LLCs - consolidated returns | (0.20) | (0.20) | (0.10) | (0.10) | (0.30) | (0.30) |
| Total | (165.20) | (168.80) | (99.90) | (102.10) | (265.10) | (270.90) |
| | | | | | | |
| | | | | | | |

The

above estimates for exempting another 1/3 of the accounts receivables and for LLC's filing consolidated returns assume the rate for intangible tax is lowered by .5 mills.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See section III.A.2.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Both individuals and businesses will pay less intangible tax.

3. Effects on Competition, Private Enterprise and Employment Markets:

At the request of the leadership of the Florida Legislature, Florida TaxWatch established a Florida Intangible Tax Task Force to examine the impact Florida's intangible tax has on the economic development and competitive position of Florida. The task force met during the winter of 1997-98 and 1998-99. The task force concluded that many aspects of the intangible personal property tax deterred economic growth in Florida. The changes made to the intangible tax by this bill should have positive impact on economic growth in Florida.

D. **FISCAL COMMENTS:**

None.

V. 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:**

While the bill will reduce the amount shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

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