

CHAPTER 99-242

Committee Substitute for Senate Bill No. 318

An act relating to intangible property taxes; amending s. 199.023, F.S.; changing the term “affiliated group of corporations” to the term “affiliated group” and including limited liability companies within its meaning; amending s. 199.033, F.S.; reducing the rates of the tax on securities in a Florida Futures Investment Fund to conform; amending s. 199.052, F.S.; providing that limited liability companies may elect to file a consolidated intangibles tax return; amending s. 199.032, F.S.; reducing the rate of such taxes; amending s. 199.185, F.S.; prescribing the amount of accounts receivable subject to the tax as of January 1, 2000; providing that an exemption applies to the last 0.5 mill of the annual tax; providing an effective date.

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

Section 1. Subsection (8) of section 199.023, Florida Statutes, 1998 Supplement, is amended to read:

199.023 Definitions.—As used in this chapter:

(8) “Affiliated group of corporations” means 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 limited liability company, for which 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 or limited liability company, is owned directly by one or more of the other corporations or limited liability companies; 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 or membership interest in a limited liability company of at least one of the other corporations or limited liability companies.

As used in this subsection, the terms ~~term~~ “nonvoting stock” and “membership interest in a limited liability company” ~~do~~ does not include nonvoting stock or membership interest in a limited liability company which is limited and preferred as to dividends. For purposes of this chapter, a common parent may be a corporation or a limited liability company.

Section 2. Subsection (1) of section 199.033, Florida Statutes, is amended to read:

199.033 Securities in a Florida's Future Investment Fund; tax rate.—

(1) Notwithstanding the provisions of this chapter, the tax imposed under s. 199.032 on securities in a Florida's Future Investment Fund shall apply at the rate of 1.35 ~~1.85~~ mills when the average daily balance in such funds exceeds \$2 billion and at the rate of 1.20 ~~1.70~~ mills when the average daily balance in such funds exceeds \$5 billion.

Section 3. Subsection (10) of section 199.052, Florida Statutes, 1998 Supplement, is amended to read:

199.052 Annual tax returns; payment of annual tax.—

(10) An affiliated group of ~~corporations~~ may elect to make a consolidated return for any year. The election shall be made by timely filing a consolidated return. Once made, an election may not be revoked, and it is binding for the tax year. The mere making of a consolidated return shall not in itself provide a business situs in this state for intangible personal property held by a corporation. The fact that members of an affiliated group own stock in corporations or membership interest in limited liability companies which do not qualify under the stock ownership or membership interest in a limited liability company requirements as members of an affiliated group shall not preclude the filing of a consolidated return on behalf of the qualified members. Where a consolidated return is made, intercompany accounts, including the capital stock or membership interest in a limited liability company of an includable corporation or limited liability company, other than the parent, owned by another includable corporation or limited liability company, shall not be subject to annual taxation. However, capital stock, or membership interest in a limited liability company, and other intercompany accounts of a nonqualified member of the affiliated group shall be subject to annual tax. Each consolidated return shall be accompanied by documentation identifying all intercompany accounts and containing such other information as the department shall require. Failure to timely file a consolidated return shall not prejudice the taxpayer's right to file a consolidated return, provided that the failure to file a consolidated return is limited to 1 year and the taxpayer's intent to file a consolidated return is evidenced by the taxpayer having filed a consolidated return for the 3 years prior to the year the return was not timely filed.

Section 4. Section 199.032, Florida Statutes, is amended to read:

199.032 Levy of annual tax.—An annual tax of 1.5 ~~2~~ mills is hereby imposed on each dollar of the just valuation of all intangible personal property ~~that~~ which has a taxable situs in this state, except for notes and other obligations for the payment of money, other than bonds, which are secured by mortgage, deed of trust, or other lien upon real property situated in the state. This tax shall be assessed and collected as provided in this chapter.

Section 5. Paragraph (l) of subsection (1) and paragraph (b) of subsection (2) of section 199.185, Florida Statutes, 1998 Supplement, are amended to read:

199.185 Property exempted from annual and nonrecurring taxes.—

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

(l) Two-thirds ~~One-third~~ of the accounts receivable arising or acquired in the ordinary course of a trade or business which are owned, controlled, or managed by a taxpayer on January 1, 2000 ~~1999~~, and thereafter. It is the intent of the Legislature that, pursuant to future legislative action, the portion of such accounts receivable exempt from taxation be increased to two-thirds ~~for taxes levied on January 1, 2000~~, and further increased to all such accounts receivable on January 1, 2001, and thereafter. This exemption does not apply to accounts receivable that ~~which~~ arise outside the taxpayer's ordinary course of trade or business. For the purposes of this chapter, the term "accounts receivable" means a business debt that is owed by another to the taxpayer or the taxpayer's assignee in the 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 contracts, 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 examples specified in this paragraph shall be deemed not to be supported by negotiable instruments. The term "negotiable instrument" means a written document that is legally capable of being transferred by indorsement or delivery. The term "indorsement" means the act of a payee or holder in writing his or her name on the back of an instrument without further qualifying words other than "pay to the order of" or "pay to" whereby the property is assigned and transferred to another.

(2)

(b) With respect to the last 0.5 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.

Agents and fiduciaries, other than guardians and custodians under a gifts-to-minors act, filing as such may not claim this exemption on behalf of their principals or beneficiaries; however, if the principal or beneficiary returns the property held by the agent or fiduciary and is a natural person, the principal or beneficiary may claim the exemption. No taxpayer shall be entitled to more than one exemption under paragraph (a) and one exemption under paragraph (b). This exemption shall not apply to that intangible personal property described in s. 199.023(1)(d).

Section 6. This act shall take effect January 1, 2000.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.