

Committee Substitute for House Bill Nos. 67 and 187

An act relating to taxation; amending s. 199.023, F.S.; revising the definition of a “beneficial interest” in a trust for intangible personal property tax purposes; amending s. 199.032, F.S.; reducing the rate of the annual intangible personal property tax; amending s. 199.033, F.S.; reducing the rates of the tax on securities in a Florida’s Future Investment Fund to conform; amending s. 199.052, F.S.; providing that a trustee is not responsible for returns and is not required to pay annual tax on trust property; providing that a Florida resident with a beneficial interest in a trust is responsible for returns and payment of tax for his or her equitable share; revising provisions relating to the responsibilities of a bank or savings association acting as agent of a trust other than as a trustee and providing that its management or control shall not be used as a basis for imposing the annual tax; providing that intangible assets managed by a fiduciary or agent shall not have taxable situs in this state solely by virtue of such management; amending s. 199.175, F.S.; revising the definition of “any person domiciled in this state”; amending s. 199.183, F.S.; providing that intangible personal property owned, managed, or controlled by a trustee of a trust is exempt from the annual tax; amending s. 199.185, F.S.; providing that all accounts receivable are exempt from intangible personal property taxes; revising the exemption from the annual tax granted to natural persons; amending s. 199.292, F.S.; eliminating distribution of a portion of intangible personal property tax revenues to the Revenue Sharing Trust Fund for Counties; amending s. 212.20, F.S.; increasing the distribution of sales and use tax proceeds to the Local Government Half-cent Sales Tax Clearing Trust Fund; providing for distribution of a portion of sales and use tax proceeds to the Revenue Sharing Trust Fund for Counties; amending s. 218.23, F.S.; providing for an annual distribution from the trust fund to certain consolidated units of local government; amending s. 218.25, F.S.; providing additional assurance to holders of bonds secured by shared funds; amending s. 288.1169, F.S.; correcting a reference; repealing s. 218.251, F.S.; which provides for an additional distribution to certain consolidated governments, subject to annual appropriations; providing an effective date.

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

Section 1. (1) Subsection (7) of section 199.023, Florida Statutes, is amended to read:

199.023 Definitions.—As used in this chapter:

(7) 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).

(2) This section is effective for tax years beginning after December 31, 2000.

Section 2. (1) Section 199.032, Florida Statutes, is amended to read:

199.032 Levy of annual tax.—An annual tax of 1 mill ~~1.5 mills~~ is imposed on each dollar of the just valuation of all intangible personal property that 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.

(2) This section is effective for tax years beginning after December 31, 2000.

Section 3. (1) 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 .85 mill ~~1.35 mills~~ when the average daily balance in such funds exceeds \$2 billion and at the rate of .70 mill ~~1.20 mills~~ when the average daily balance in such funds exceeds \$5 billion.

(2) This section is effective for tax years beginning after December 31, 2000.

Section 4. (1) Subsections (5), (6), (9), and (15) of section 199.052, Florida Statutes, are amended to read:

199.052 Annual tax returns; payment of annual tax.—

(5) The trustee of a ~~Florida-situs~~ trust is not primarily responsible for returning the trust's intangible personal property and is not required to pay any ~~paying the~~ annual tax on it.

(a) ~~A trust has a Florida situs when:~~

- ~~1. All trustees are residents of the state;~~
- ~~2. 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~~
- ~~3. Trustees consist of both residents and nonresidents and management or control of the trust is with a resident trustee.~~

(b) ~~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.~~

(c) ~~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.

~~(d) If there is more than one trustee in the state, only one tax return for the trust must be filed.~~

~~(e) 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 may require the trustee to file an informational return.~~

(6) Each Florida resident with a beneficial interest, as defined in s. 199.023(7), in a ~~foreign-situs trust, that is, a trust with situs outside of this state,~~ is primarily responsible for returning the resident's equitable share of the trust's intangible personal property and paying the annual tax on it. The trustee of a ~~foreign~~ trust may return and pay the tax on the equitable shares of all Florida residents having beneficial interests, in which case the residents need not return such property or pay such tax.

(9) Where an agent other than a trustee 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. The department may in any case require the agent to file an informational return.

~~(15) If a bank or savings association, as defined in s. 220.62, acts as a fiduciary or agent of a trust other than as a trustee, the bank or savings association is not responsible for returning the trust's intangible personal property and is not required to pay any annual tax on it, and intangible personal property of the trust shall not have taxable situs in this state pursuant to s. 199.175 solely by virtue of the management or control of the bank or savings association shall not be used as the basis for imposing any annual tax on any person or any assets of the trust. If a person acts as a fiduciary or agent for purposes of managing intangible assets owned by another person, such intangible assets shall not have a taxable situs in this state pursuant to s. 199.175 solely by virtue of the management or control of such assets by the person who is not the owner of the assets.~~

(2) This section is effective for tax years beginning after December 31, 2000.

Section 5. (1) Paragraph (a) of subsection (1) of section 199.175, Florida Statutes, is amended to read:

199.175 Taxable situs.—For purposes of the annual tax imposed under this chapter:

(1) 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; or
3. Any person, including a business trust, who has established a commercial domicile in this state.

(2) This section is effective for tax years beginning after December 31, 2000.

Section 6. (1) Subsection (4) is added to section 199.183, Florida Statutes, to read:

199.183 Taxpayers exempt from annual and nonrecurring taxes.—

(4) Intangible personal property that is owned, managed, or controlled by a trustee of a trust is exempt from annual tax under this chapter. This exemption does not exempt from annual tax a resident of this state who has a taxable beneficial interest, as defined in s. 199.023, in a trust.

(2) This section is effective for tax years beginning after December 31, 2000.

Section 7. (1) Paragraph (l) of subsection (1) and subsection (2) of section 199.185, Florida Statutes, 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) ~~All Two-thirds 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, 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 all such accounts receivable on January 1, 2001, and thereafter.~~ This exemption does not

apply to accounts receivable that 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)(a) 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 annual said tax. A husband and wife filing jointly shall have an exemption of \$40,000.~~

~~(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 this subsection 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).

(2) This section is effective for tax years beginning after December 31, 2000.

Section 8. Subsection (3) of section 199.292, Florida Statutes, is amended to read:

199.292 Disposition of intangible personal property taxes.—All intangible personal property taxes collected pursuant to this chapter shall be placed in a special fund designated as the "Intangible Tax Trust Fund." The fund shall be disbursed as follows:

(3) Of the remaining intangible personal property taxes collected, the balance an amount equal to 35.3 percent in state fiscal year 1998-1999 and an amount equal to 37.7 percent in each year thereafter, shall be transferred to the Revenue Sharing Trust Fund for Counties. ~~Of the remaining taxes~~

collected, ~~an amount equal to 64.7 percent in state fiscal year 1998-1999 and an amount equal to 62.3 percent in each year thereafter,~~ shall be transferred to the General Revenue Fund of the state.

Section 9. Paragraph (f) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter shall be as follows:

(f) The proceeds of all other taxes and fees imposed pursuant to this chapter shall be distributed as follows:

1. In any fiscal year, the greater of \$500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this chapter shall be deposited in monthly installments into the General Revenue Fund.

2. Two-tenths of one percent shall be transferred to the Solid Waste Management Trust Fund.

3. After the distribution under subparagraphs 1. and 2., 9.653 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund.

4. After the distribution under subparagraphs 1., 2., and 3., ~~0.065~~ 0.054 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. For proceeds received after July 1, 2000, and after the distributions under subparagraphs 1., 2., 3., and 4., 2.25 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

~~6.5.~~ Of the remaining proceeds:

a. Beginning July 1, 1992, \$166,667 shall be distributed monthly by the department to each applicant that has been certified as a “facility for a new professional sports franchise” or a “facility for a retained professional sports franchise” pursuant to s. 288.1162 and \$41,667 shall be distributed monthly by the department to each applicant that has been certified as a “new spring training franchise facility” pursuant to s. 288.1162. Distributions shall begin 60 days following such certification and shall continue for 30 years. Nothing contained herein shall be construed to allow an applicant certified pursuant to s. 288.1162 to receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.1162(7). However, a certified applicant shall receive distributions up to the maximum amount allowable and undistributed under this section for additional renovations and improvements to the facility for the franchise without additional certification.

b. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, \$166,667 shall be distributed monthly, for up to 300 months, to the applicant.

c. Beginning 30 days after notice by the Department of Commerce to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, \$83,333 shall be distributed monthly, for up to 180 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169.

7.6. All other proceeds shall remain with the General Revenue Fund.

Section 10. Section 218.23, Florida Statutes, is amended to read:

218.23 Revenue sharing with units of local government.—

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement in any fiscal year, a unit of local government is required to have:

(a) Reported its finances for its most recently completed fiscal year to the Department of Banking and Finance, pursuant to s. 218.32.

(b) Made provisions for annual postaudits of its financial accounts in accordance with provisions of law.

(c) Levied, as shown on its most recent financial report pursuant to s. 218.32, ad valorem taxes, exclusive of taxes levied for debt service or other special millages authorized by the voters, to produce the revenue equivalent to a millage rate of 3 mills on the dollar based on the 1973 taxable values as certified by the property appraiser pursuant to s. 193.122(2) or, in order to produce revenue equivalent to that which would otherwise be produced by such 3-mill ad valorem tax, to have received a remittance from the county pursuant to s. 125.01(6)(a), collected an occupational license tax or a utility tax, levied an ad valorem tax, or received revenue from any combination of these four sources. If a new municipality is incorporated, the provisions of this paragraph shall apply to the taxable values for the year of incorporation as certified by the property appraiser. This paragraph requires only a minimum amount of revenue to be raised from the ad valorem tax, the occupational license tax, and the utility tax. It does not require a minimum millage rate.

(d) Certified that persons in its employ as law enforcement officers, as defined in s. 943.10(1), meet the qualifications for employment as established by the Criminal Justice Standards and Training Commission; that its salary structure and salary plans meet the provisions of chapter 943; and that no law enforcement officer is compensated for his or her services at an annual salary rate of less than \$6,000. However, the department may waive the minimum law enforcement officer salary requirement if a city or county certifies that it is levying ad valorem taxes at 10 mills.

(e) Certified that persons in its employ as firefighters, as defined in s. 633.30(1), meet the qualification for employment as established by the Division of State Fire Marshal pursuant to the provisions of ss. 633.34 and 633.35 and that the provisions of s. 633.382 have been met.

(f) Certified that each dependent special district that is budgeted separately from the general budget of the local governing authority has met the provisions for annual postaudit of its financial accounts in accordance with the provisions of law.

Additionally, to receive its share of revenue sharing funds, a unit of local government shall certify to the Department of Revenue that the requirements of s. 200.065, if applicable, were met. The certification shall be made annually within 30 days of adoption of an ordinance or resolution establishing a final property tax levy or, if no property tax is levied, not later than November 1. The portion of revenue sharing funds which, pursuant to this part, would otherwise be distributed to a unit of local government which has not certified compliance or has otherwise failed to meet the requirements of s. 200.065 shall be deposited in the General Revenue Fund for the 12 months following a determination of noncompliance by the department.

(2) Any unit of local government which is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the 1968 revised constitution, shall receive an annual distribution from the Revenue Sharing Trust Fund for Counties equal to \$6.24 times its population.

~~(3)~~(2) The distribution to a unit of local government under this part is determined by the following formula:

(a) First, the entitlement of an eligible unit of local government shall be computed on the basis of the apportionment factor provided in s. 218.245, which shall be applied for all eligible units of local government to all receipts available for distribution in the respective revenue sharing trust fund.

(b) Second, revenue shared with eligible units of local government for any fiscal year shall be adjusted so that no eligible unit of local government receives less funds than its guaranteed entitlement.

(c) Third, revenues shared with counties for any fiscal year shall be adjusted so that no county receives less funds than its guaranteed entitlement plus the second guaranteed entitlement for counties.

(d) Fourth, revenue shared with units of local government for any fiscal year shall be adjusted so that no unit of local government receives less funds than its minimum entitlement.

(e) Fifth, after the adjustments provided in paragraphs (b), (c), and (d), and after deducting the amount committed to all the units of local government, the funds remaining in the respective trust funds shall be distributed to those eligible units of local government which qualify to receive additional moneys beyond the guaranteed entitlement, on the basis of the additional

money of each qualified unit of local government in proportion to the total additional money of all qualified units of local government.

(4)(3) Notwithstanding the provisions of paragraph (1)(c), no unit of local government which was eligible to participate in revenue sharing in the 3 years prior to initially participating in the local government half-cent sales tax shall be ineligible to participate in revenue sharing solely due to a millage or utility tax reduction afforded by the local government half-cent sales tax.

Section 11. Subsection (3) is added to section 218.25, Florida Statutes, to read:

218.25 Limitation of shared funds; holders of bonds protected; limitation on use of second guaranteed entitlement for counties.—

(3) As an additional assurance 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, it is the intent of the Legislature 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.

Section 12. Subsection (6) of section 288.1169, Florida Statutes, is amended to read:

288.1169 International Game Fish Association World Center facility; department duties.—

(6) The Department of Commerce must recertify every 10 years that the facility is open, that the International Game Fish Association World Center continues to be the only international administrative headquarters, fishing museum, and Hall of Fame in the United States recognized by the International Game Fish Association, and that the project is meeting the minimum projections for attendance or sales tax revenues as required at the time of original certification. If the facility is not recertified during this 10-year review as meeting the minimum projections, then funding will be abated until certification criteria are met. If the project fails to generate \$1 million of annual revenues pursuant to paragraph (2)(e), the distribution of revenues pursuant to s. 212.20(6)(f) ~~6.5.c.~~ shall be reduced to an amount equal to \$83,333 multiplied by a fraction, the numerator of which is the actual revenues generated and the denominator of which is \$1 million. Such reduction shall remain in effect until revenues generated by the project in a 12-month period equal or exceed \$1 million.

Section 13. Section 218.251, Florida Statutes, is repealed.

Section 14. This act shall take effect July 1, 2000.

Approved by the Governor June 2, 2000.

Filed in Office Secretary of State June 2, 2000.