
The Intangibles Taxation of Trust Operations and Out-of-State Assets Managed by Florida Investment Advisors is Penny Wise - Pound Foolish

The problems with Florida's intangible personal property tax are well documented. The barriers to economic development and the tax inequities they create have led many of those affected to conclude that the tax is not right for Florida. The Florida Legislature has taken steps in each of the last two years to reduce the tax, with the widely accepted goal of its eventual elimination.

Florida TaxWatch's Intangibles Tax Task Force issued recommendations in 1998 and 1999 which were largely enacted by the Legislature. The 1998 Legislature enacted changes including: beginning a phase-in of an exemption for accounts receivable, an exemption for banks and insurance companies, an increased minimum payment, and reduced penalties.

The 1999 Legislature continued the accounts receivable exemption phase-in, and most importantly, began the eventual elimination of the tax by reducing the rate from 2.0 mills to 1.5 mills. It appears that the 2000 Legislation will further reduce the rate (by at least .5 mill) and complete the accounts receivable exemption.

Only two recommendations of the first Task Force have not been implemented the exemption of trust operations and assets managed by investment advisors. Despite the probable eventual demise of the tax, there is no reason to delay correcting the remaining problems now.

The Taxation of Florida-Situs Trusts

One of the most obvious economic development obstacles created by the intangibles tax is the taxation of trust operations. The current law unfairly puts Florida trustees at a competitive disadvantage with out-of-state trustees.

Under current law, Florida-domiciled trustees pay the intangibles tax on the assets of trusts, regardless of where the beneficiaries reside. A foreign-domiciled trustee does not pay the tax. If the foreign-domiciled trust has a Florida beneficiary with a taxable beneficial interest, then the beneficiary must pay tax on that interest.

Since Florida is one of only a few states that impose this tax on trust operations, the current system obviously discourages commercial trust business in Florida. Since trust departments and companies compete nationally, states without an intangibles tax have an advantage over Florida in that trusts can easily be managed from other states.

The popularity of trusts as estate planning vehicles is growing. As more and more people retire in Florida, a strong economy and stock market are creating a huge demand for trust management. Unfortunately, Florida trust operations report large amounts of trust capital leaving Florida to other states in order to avoid paying the intangibles tax. Normally, trust operations are the type of industry which states seek to foster environmentally clean ones that create high-paying jobs.

An exemption from the intangibles tax should be created for all trustees. This would treat all trustees alike, leveling the playing field for Florida-domiciled trustees and foreign ones. In Florida, commercial and non-commercial trustees would also be on equal footing.

It is estimated that an exemption for all trustees would have a negative fiscal impact of \$21.8 million. However, this is an example of where economic development benefits can produce tax revenue both directly and indirectly to offset intangibles tax losses. In addition, the fiscal impact does not take into account the inevitable reduction in taxes collected due to the trend of dramatic increases in trust capital leaving the state.

A limited survey of Florida law firms in early 1999 by the Florida Bankers Association reports more than \$7 billion of assets held in trusts were created by the Florida firms but where out-of-state trustees were chosen because of intangibles tax concerns. About half of this was attributable to commercial trustees. This suggests that Florida-domiciled trustees are losing a significant amount of business to other states. The increased franchise (income) tax that would be paid by commercial trustees if they retained this business would be substantial. State economists have confirmed that a loss of trust capital results in a notable loss of direct state tax revenues. Indirect tax benefits would result from the added economic activity.

Florida TaxWatch recommends that an exemption from the intangibles tax be created for all trustees. Florida-domiciled beneficiaries with a taxable beneficial interest in such a trust would still be required to pay the tax on their portion of the trust. No tax would be imposed on a trust in which no Florida resident has a taxable beneficial interest.

The Taxation of Florida Investment Advisors

A similar situation exists if an out-of-state person hires a Florida investment advisor or manager. Since Florida Law imposes the intangibles tax on assets that are "owned, managed or controlled" by a person domiciled in Florida, if a non-resident hires a Florida company to trade securities, this level of "control" makes the property subject to taxation. There is no justification for taxing the management of other peoples' assets, and this practice also discourages a highly desirable industry in Florida. Exercising discretion

over intangible assets owned by an unrelated non-resident of Florida should not create taxability of those assets.

It is estimated that an intangibles tax exemption for investment advisors would have a negative fiscal impact of less than \$2 million.

Florida TaxWatch recommends that an exemption from the intangibles tax be created for investment advisors. An investment advisor, who does not own but has authority to invest money on behalf of a principal, would not be required to file a return and pay tax on the intangible personal property with respect to the assets the advisor purchases with the principal's funds. Further, if an investment advisor acts as a fiduciary or an agent of a principal, intangible personal property of the principal should not have a taxable situs in this state simply because the investment advisor who manages the funds is located in the state.

Legislative Action

As this *Briefing* goes to press, two bills are before the 2000 Florida Legislature to address these issues. House Bill 415 and Senate Bill 192 would exempt Florida trustees from paying the intangibles tax on assets they manage. HB 415 has cleared two committees and an amendment was adopted to also exempt investment advisors from the tax on accounts owned by non-residents.

This legislation would help ease the anti-competitive nature of current law by putting Florida financial industries on equal footing with out-of-state companies and eliminate the simple management of other people's money as a basis for imposing the intangibles tax.

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