

The Florida Intangibles Tax – A Lesser Evil?

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Since 1931, Florida has imposed an intangible personal property tax (the "FIT"). As Florida has no individual income tax, and such a tax is prohibited by the state's Constitution, Florida is one of the few states which imposes the FIT as an additional source of revenue.

Traditionally, this generally unpublicized tax has been one of the few disincentives for wealthy retirees to move to Florida. However, recent cutbacks in the scope and amount of the FIT, along with the implementation of various planning techniques, have somewhat reduced its overall practical effect. In essence, the FIT should no longer be a significant factor in choosing whether or not to live in Florida.

The FIT is imposed upon the market value, as of January 1st of each year, of the intangible personal property owned by Florida individual residents, Florida entities, and non-Florida businesses with a tax situs in Florida. "Residence" for FIT purposes is where a person has his true, fixed, and permanent home and principal establishment to which, when absent, he has the intention of returning. Florida residence is presumed if an individual qualifies for a Florida homestead exemption, votes in this state, has a current Florida driver's license, or declares Florida residency on a personal federal income tax return. Taxable property includes items such as corporate stocks and bonds, mutual funds, accounts receivable and other loans not secured by real property, and interests in limited liability companies. In contrast, franchises, general partnership interests, limited partnership interests (where not registered with the SEC), certain Florida and U.S. government debt, cash, certificates of deposit, and the intangible assets of IRAs and qualified employee and deferred compensation plans are examples of property which are exempt from this tax. In general, the FIT return is due by June 30th of each year, with discounts available for early filing and payment.

Interest and penalties apply in the event of late payment, nonpayment, or the failure to file the Florida return. In addition, as a result of increased information sharing between the Florida Department of Revenue and the Internal Revenue Service, Florida has been able to identify and seek payment from those persons who were either unaware of their liability for the tax or knowingly had failed to file.

In recent years, the FIT was imposed at the rate of \$2,000 per \$1 million of assets. Wealthy individuals and businesses have used various means to avoid this tax, which on a practical basis are not available to the general public. For example, properly established non-Florida trusts and other creative means have been used for a number of years as a means of reducing or eliminating FIT liability. Significantly, this meant that the persons that were arguably the original target of the FIT were the most successful in not having to pay it, leaving the bulk of the FIT tax burden to the upper middle-class.

After substantial debate, taking into account this situation, effective as of January 1, 2000, the FIT was reduced to \$1,500 per \$1 million. In addition, two-thirds of trade or business accounts receivable are now exempt, and the minimum tax liability is now \$60.

At a recent Orlando, Florida seminar on state tax matters, prominent commentators and Florida Department of Revenue personnel indicated their mutual belief that the FIT may soon be entirely repealed. Until such time, however, any persons or entities potentially subject to the FIT should continue to file as before, subject to the new rules, after seeking appropriate professional assistance.