INTANGIBLE TAX RULES:

Current Through 9-18-11

CHAPTER 12C-2 INTANGIBLE PERSONAL PROPERTY TAX (Formerly 12B-2)

12C-2.001 Definitions.

The following terms and phrases when used in these regulations and in the interpretation thereof, shall have the meaning ascribed to

them as follows:

(1) "Domicile and Residence" – For the purpose of these regulations the two terms are synonymous. The terms domicile and residence describe where a person has his true, fixed and permanent home and principal establishment, and to which when absent, he has the intention of returning. The following criteria will give rise to a presumption of Florida domicile unless refuted by competent evidence: qualifying for homestead exemption or voting rights. Other factors which may be considered but which are not conclusive are: ownership of Florida residence, having Florida licenses, or declaration of Florida residency on Federal income tax returns. Any alien political refugee possessing a permanent visa meeting the criteria above will be considered domiciled in this state.

(2) "Foreign" – Belonging or attached to a political jurisdiction other than the State of Florida, its counties or municipalities.

(3) "Just Value, Just Valuation, Cash Value, Full Cash Value, Present Cash Value, Market Value, Actual Value and Value" – These terms are synonymous. The price which the vendor's interest would bring if offered for sale by one who desires to sell but is not compelled to sell, and bought by one willing to buy but not compelled to buy, with both seeking to maximize their gains and neither being in a position to take advantage of the other.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.023 FS. History–New 4-17-72, Amended 9-27-76, Formerly 12C-2.01, Amended

11-21-91.

12C-2.002 Property Subject to Tax - Annual and Nonrecurring.

(1) The following are examples of property subject to annual taxation:

(a) Accounts Receivable – a debt which is owed by another which is not supported by a negotiable paper. For tax years beginning on or after January 1, 2001, accounts receivable arising out of normal trade or business are exempt from tax.

(b) Accrued Interest – interest that has been earned but is not yet paid and is payable. Interest which has accrued due to the passage of time, but is not due and payable is not taxable.

(c) Beneficial Interest in a Trust – one or more valuable property rights in a trust. A taxable beneficial interest in a trust is the current right to income coupled with: the right to invade the corpus of the trust; or the right to revoke the trust; or the right to appoint successor beneficiaries without limitation. A beneficial interest in a trust is taxable only to the extent the trust corpus consist of property subject to the annual tax.

(d) Charitable Unitrust – such trusts are taxable while trust corpus is held by a nonexempt trustee. For tax years beginning on or after January 1, 2001, charitable unitrusts are exempt from tax.

(e) Closely Held Stock – stock in a corporation which is held by a small number of persons and is not traded on any exchange or over-the-counter.

(f) Commercial Paper – includes promissory notes, short term notes issued by corporations; or bearer instruments. This does not include banker's acceptances, trade acceptances or checks.

(g) Contract Retainage – that portion of the requisition for construction progress payments which was withheld pending final approval by the person having the authority to give such approval is deemed to be a valid and enforceable account receivable, after the condition creating the contract retainage has been met.

(h) Cooperative Housing Association – shares of stock held in a cooperative housing association are taxable only if ownership of the stock and the ownership of the housing unit can be separated.

(i) Custody Account – a custody account is taxable only if the custodian is exercising discretionary powers over the assets held in the custody account. For tax years beginning on or after January 1, 2001, custody accounts are exempt.

(j) Commodity Futures or Futures Contract – the present right to receive at a future date a specific quantity of a given commodity for an agreed price.

(k) Federal National Mortgage Association (FNMA) – all obligations issued by FNMA, since all class A stock owned by the U.S. government has been retired.

(1) Governmental Leasehold Estates – all government-owned property is subject to the intangible personal property tax if rental payments are due as consideration for the lease.

(m) Insurance Premiums -

1. Insurance premiums for the year that are financed are accounts receivable.

2. Due, but uncollected, premiums (those premiums that are in a grace period) are not taxed.

3. For tax years beginning on or after January 1, 2000, insurance companies are exempt from tax.

(n) Leases – payments required to be made under lease contracts will be taxed as receivables under the following conditions:

1. Lease payments which are past due.

2. Lease contracts which transfer title to the property to the lessee by or at the end of the lease term.

3. Lease contracts which contain a bargain purchase option. An example of a bargain purchase option is the purchase of the property at a price below market value or salvage value.

4. Lease contracts that require the lessee to pay the lessor even if the property is not used by the lessee. This does not include payments due under operating leases or true leases.

(o) Limited Partnership Interest – a taxable interest in a limited partnership for intangible tax purposes shall include an interest in a limited partnership registered with the securities and exchange commission.

(p) Line of Credit – based on the outstanding balance on January 1 of each tax year when not evidenced by a note secured by a mortgage or other lien on Florida real property. When secured by a lien on real property in Florida, the maximum amount allowed under the line is subject to the nonrecurring tax.

(q) Loans from Shareholders – are receivables owned by the shareholder.

(r) Margin Accounts -

1. Receivables arising from margin accounts are taxable to the broker. For tax years beginning on or after January 1, 2001, margin account receivables are exempt from tax.

2. Stocks bought on margin are the property of the purchaser and are to be reported for taxation by the purchaser.

(s) Business Trust – business trust organized under an indenture of trust and issuing units of undivided beneficial interest in the trust assets. [also see Money Market Funds and subsection 12C-2.003(8), F.A.C.]

(t) Membership Certificates – membership certificates in private clubs which represent one share in a notfor-profit corporation if membership in the club and ownership of the share of stock are separable.

(u) Money Market and Mutual Funds -

1. Funds organized as business trusts and offering units of undivided beneficial interest. If the fund's portfolio of assets consists solely of assets which are not taxable under Chapter 199, F.S., then the units are exempt.

2. The shares of funds organized as corporations are taxed as other corporate stock.

3. Money market accounts offered by banks which are deposits of money are not taxable.

(v) Note Receivable – an instrument which contains a promise or obligation to pay money by the maker is subject to tax.

(w) Production Credit Association – intangibles issued by or owned by production credit associations are subject to tax. All class A stock held by U.S. Government has been retired removing the exemption provided in Title 12 Section 1138C USC.

(x) Repurchase Agreements -

1. Repurchase agreements between banks are not taxed as an intangible, but are treated as cash.

2. Repurchase agreements where securities are offered as collateral for the agreement are taxable at face value.

3. Repurchase agreements where title to the security passes to the purchaser are not subject to taxation.

(y) Restricted Stock – may be valued at less than full just value based upon the facts and circumstances creating the restrictions.

(z) Small Business Administration Loans – to the extent the obligation is not directly owned by the Small Business Administration. For example, loans guaranteed by the SBA are taxable, while those made directly by the SBA are exempt.

(aa) Stock – shares or units of incorporated or unincorporated companies, limited liability companies, business trusts, mutual funds, and money market funds.

(bb) Stock Option – the right to purchase a given number of shares of stock at or during a period of time.

(cc) Stock of an "S" Corporation – taxable as all other shares of corporate stock.

(dd) Treasury Stock – when acquired for a specific purpose is taxable to the corporation. Treasury stock acquired for no specific purpose is not taxable. For example, treasury stock which is to be retired is not taxable. Treasury stock which is acquired for use in a retirement plan is taxable.

(ee) Trust – a trust having a taxable situs in Florida is primarily taxable to the trustee. For tax years beginning on or after January 1, 2001, trustees are no longer required to file returns or pay the tax. A beneficiary, having a taxable beneficial interest, is responsible for filing a return for the taxable trust assets.

(2) The following are examples of property subject to the nonrecurring tax:

(a) Agreements or contracts for deed.

(b) Agreements not to encumber real property if the agreement attaches as a lien on the real property.

(c) Future Advances – to the extent secured by a lien on Florida real property.

(d) Line of Credit – to the extent secured by a lien on Florida real property as described in Section 199.143, F.S.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.133, 199.135,

199.143, 199.145, 199.155, 199.175, 199.183, 199.185, 199.202 FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly

12C-2.02, Amended 11-21-91, 10-9-01.

12C-2.003 Exemptions.

The following intangible property shall be exempt from the tax:

(1) Money.

(2) Property owned or issued by the United States Government or its agencies. For example:

(a) Federal Land Banks.

(b) Federal Land Bank Associations.

(c) Government National Mortgage Association (Ginnie Mae).

(d) Federal Home Loan Banks.

(e) Federal Intermediate Credit Banks.

(f) Federal Deposit Insurance Corporation.

(g) Federal Reserve Banks.

(h) Small Business Administration – loans made by the SBA are exempt to the extent of the direct participation in the loan by the SBA. Loans guaranteed by the SBA are fully taxable.

(i) Joint Stock Land Banks – only first mortgages.

(3) Credit Unions – all intangibles owned or issued by credit unions chartered under federal or Florida law, so long as the exemption for federal credit unions exists.

(4)(a) Property owned or issued by the State of Florida or any of its political subdivisions or municipalities. For example:

1. Authorities created under Chapter 159, F.S.

2. Public Health Facility Authorities created by Chapter 154, F.S.

3. Other authorities created by local governments and authorized by Florida Statutes.

(b) This exemption does not apply to a leasehold or other interest in governmental property held by nongovernmental persons.

(5) An individual beneficiary, having a present vested interest in intangible property held in a trust or an estate by a Florida trustee or personal representative, may file a return reporting his proportionate interest in the intangible property of the trust or estate and claim the exemption afforded natural persons.

(6) Property worth up to \$500, held and owned by widows, widowers, blind persons and totally and permanently disabled persons. If this exemption is claimed for county ad valorem tax purposes it shall not be used to determine the taxable value of intangible personal property under this chapter.

(7) Bonds issued by a United Nations agency.

(8) Business trust – shares or units of a business trust are exempt if the portfolio of assets contains only assets which are exempt from taxation. The net asset value of a business trust with taxable assets must be proportionately reduced if the portfolio of assets contains debt obligations of the United States Government.

(9) Accounts Receivable:

(a) For tax years beginning January 1, 2001, and thereafter, all accounts receivable arising from normal trade or business are exempt from tax.

(b) For the tax year beginning January 1, 2000, two-thirds of the taxable accounts receivable arising from normal trade or business are exempt from tax.

(c) For the tax year beginning January 1, 1999, one-third of the taxable accounts receivable arising from normal trade or business are exempt from tax.

(d) For the tax year beginning January 1, 1998, and all prior years, all accounts receivable are subject to tax.

(10) A charitable trust is exempt from tax. For the purpose of this exemption, a charitable trust is a trust that is paying 95 percent or more of its income to one or more organizations exempt from federal income tax under Section 501(c)(3), IRC.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.183, 199.185, 213.12(2) FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, 4-21-75, Formerly 12C-2.03, Amended 11-21-91, 10-9-01.

12C-2.004 Levy of Tax - Annual and Nonrecurring.

(1) Annual Tax – An annual tax on the just value of intangible property having a taxable situs in Florida is levied as follows:

(a)1. All firms, partnerships, joint ventures, associations, corporations, estates, trusts, trustees, personal representatives, receivers, guardians, custodians and other fiduciaries are subject to the full tax rate of \$1.00 per thousand dollars (1 mill) of just value of intangible property having a taxable situs in Florida.

2. Example: Artificial entities and fiduciaries.

(b) Natural persons filing an individual or joint return are subject to the tax rate of \$1.00 per thousand dollars (1 mill) of just value of intangible property in excess of \$250,000.00 (\$500,000.00 for a married couple filing a joint return).

Examples:

- 1. Individual having taxable assets valued at \$300,000.00.
- 2. Individual having taxable assets valued at \$430,000.
- 3. Married couple filing jointly having taxable assets valued at \$555,000.
- 4. Married couple filing jointly having taxable assets valued at \$760,000.00.

(2) Nonrecurring tax:

(a)1. There shall be levied a nonrecurring tax of \$2.00 per thousand dollars (2 mills) of just value of a note or other obligation for payment of money which is secured by a mortgage, deed of trust, or other lien on Florida real property. Agreements and contracts for deeds and written agreements not to encumber or convey realty are subject to this levy.

2. Example: Note and mortgage given to secure loan with a principal amount of \$1,000,000.

Stocks 150,000.00

Bonds 125,000.00

Loans to Stockholders

(outstanding balances) 50,000.00

Taxable Assets \$325,000.00

Exemption 250,000.00

Tax Rate \times .001

Tax Due \$75.00

Taxable Assets \$300,000.00

Exemption -250,000.00

Net Taxable Assets \$50,000.00

Tax Rate × .001

Tax Due \$ 50.00

Total Tax Due \$0 (tax due is less than \$60.00)

Taxable Assets \$430,000.00 Exemption -250,000.00 Net Taxable Assets \$180,000.00 Tax Rate \times .001 Tax Due \$ 180.00 Total Tax Due \$180.00 Taxable Assets \$555,000.00 Exemption -500,000.00 Net Taxable Assets \$55,000.00 Tax Rate × .001 Tax Due \$ 55.00 Total Tax Due \$0 (tax due is less than \$60.00) Taxable Assets \$760,000.00 Exemption -500,000.00 Net Taxable Assets \$260,000.00 Tax Rate × .001 Tax Due \$ 260.00 Total Tax Due \$260.00 Tax computation:

(b)1. Where a note, bond or other obligation for the payment of money is secured by realty located both in and out of the state and by personal property located both in and out of the state, the nonrecurring tax shall be apportioned based on each type of property's relative percentage of the principal amount of debt at the time the obligation is created.

2.a. Example:

Note and mortgage given to secure a loan of \$1,000,000. The mortgage includes realty located in and out of Florida as well as personalty located in and out of Florida. The lender is a Florida Business.

(*) Nonrecurring 2 mill tax

(**) Annual tax on outstanding balance January 1 of tax year.

b. Example:

Note and mortgage given to secure a loan of \$1,000,000. The mortgage includes realty located in and out of Florida as well as personalty located in and out of Florida. Assume the lender does not have a taxable situs within Florida.

(c)1.a. Notes and mortgages securing future advances or lines of credit are taxable at the time each advance is made whether or not a note is recorded and tax is due only on the amount of the advance.

b. Example: A mortgage on Florida real estate provides for future advances up to a total of \$1,000,000. A future advance is made for \$500,000. Nonrecurring tax in the amount of \$1,000 ($$500,000 \times .002 = $1,000$) is due.

2.a. A line of credit secured by the equity in a borrower's home is subject to nonrecurring tax on the maximum amount of the line. Subsequent borrowings under the line are not subject to nonrecurring tax.

b. Example: A borrower establishes a \$50,000 line of credit with a bank and secures the line with a mortgage on the equity in his home. The borrower initially draws the full line of \$50,000 and pays

nonrecurring tax on this maximum amount. The borrower later repays \$30,000 of the initial amount borrowed and then draws another \$15,000. The \$15,000 draw of funds under the line is not subject to nonrecurring tax, since the nonrecurring tax was already paid on \$50,000, the maximum credit limit under the line.

(d)1. Where the value of real estate pledged to secure an obligation is less than the balance of the obligation, then the annual tax is applicable to that amount of the obligation exceeding the value of the real estate if the lender has a taxable situs in the state.

The amount of the obligation secured by the value of Florida real estate is subject to the nonrecurring tax.

2. Example:

Principal \$1,000,000.00

Tax rate \times .002

Tax due \$2,000.00

Security Value Percentage Tax

Value of Florida Realty \$250,000.00 25% \$500.00(*)

Value of NonFlorida Realty 250,000.00 25% - 0 -

Total Value of All Realty 500,000.00 50% N/A

Value of Florida Personalty 250,000.00 25% \$375.00(**)

Value of NonFlorida Personalty 250,000.00 25% \$375.00(**)

Total Value of All Personalty 500,000.00 50% \$750.00(**)

Total Collateral \$1,000,000.00 100%

Security Value Percentage Tax

Value of Florida Realty \$250,000.00 25% \$500.00

Value of NonFlorida Realty 250,000.00 25% - 0 -

Total Value of All Realty 500,000.00 50% N/A

Value of Florida Personalty 250,000.00 25% - 0 -

Value of NonFlorida Personalty 250,000.00 25% - 0 -

Total Value of All Personalty 500,000.00 50% N/A

Total Collateral \$1,000,000.00 100%

Principal Amount of Loan \$1,000,000.00

Less Value of Florida

Real Estate

(subject to nonrecurring tax) 500,000.00

Amount Not Secured

by Real Estate

(subject to annual tax) \$500,000.00

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Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.032, 199.133, 199.143, 199.185 FS., s. 1, Ch. 2001-225, L.O.F. History–New 4-17-72, Revised 12-20-73, Amended 5-8-79, Formerly 12C-2.04, Amended 11-21-91, 5-18-93, 10-9-01.

12C-2.005 Due Date - Payment of Tax - Discounts Allowed.

(1)(a)1. Annual Tax -

a. All intangible personal property subject to tax shall be assessed at its just value as of January 1 of each year. The tax shall be due June 30 and shall be paid on or before June 30 of the year it is due to be paid.

b. No return, for the current tax year, received by the department shall be considered delinquent if it bears a postmark date of June 30 of the tax year or earlier.

c. When June 30 falls on a Saturday, Sunday, or state or federal holiday, returns postmarked or delivered to the department on the next succeeding workday will be deemed to have been filed timely.

d. The full amount of the tax shown on a return must accompany the return at the time it is filed.

e. Annual taxes paid during the following periods shall be entitled to a discount for early payment of:

(I) 4% during January and February;

(II) 3% during March;

(III) 2% during April;

(IV) 1% during May;

(V) No discount for taxes paid in June.

2. The postmark date will determine the date of payment for payments mailed to the department. If no postmark is available, then the date indicated by the taxpayer on the return signature line or the date of delivery to the department will be the date of payment.

(b)1. No person subject to the annual tax shall be required to file a return or pay a tax if the tax due, before discount, is less than sixty dollars (\$60.00).

2. The annual return filing requirement will be satisfied by a corporation filing an annual report with the Department of State which indicates whether the corporation has a liability for the intangible tax. Corporations not required to file an annual report with the Department of State must file an intangible tax return even though no tax is due.

(2) Nonrecurring Tax -

(a) The nonrecurring 2 mill tax on notes, bonds and other obligations for the payment of money which are secured by mortgage, deed of trust or other lien on Florida real property shall be due and payable at the time the instrument is presented for recordation.

(b) If there is no written instrument or if the written instrument is not presented for recordation the nonrecurring tax of 2 mills shall be due and payable within 30 days following the creation of the obligation.

(c) If a mortgage, deed of trust, or other instrument evidencing a lien subject to the nonrecurring tax secures a revolving line of credit, a line of credit, or future advances, the tax shall be paid as provided in paragraphs (a) and (b) of this subsection on the initial debt or obligation, excluding future advances. Thereafter, each time a future advance is made under a future advance mortgage additional nonrecurring tax shall be paid.

(3) Extension of time for filing annual tax –

(a)1. The department shall grant an extension of time of 3 months for filing a return or report and paying the tax when it is determined there is reasonable cause for granting the extension. Reasonable cause for the purpose of administering these provisions shall be deemed to be one of the following:

a. Having been granted an extension of time to file federal income taxes. A copy of the extension from the IRS must accompany the request for extension of time; or

b. A tax payment of 100% of last year's intangible tax or 90% of the current year's tax accompanies the request for extension;

or

c. The records necessary to complete the return are not available due to fire, illness or death of the person having the knowledge to complete the return; or

d. Reasonable cause is established under the provisions of Rule 12-13.007, F.A.C.

2. All requests for extensions of time, for filing returns or reports and paying the tax, must be made in writing and received by the department prior to the due date. Request for extension of time to file an intangible tax return is to be made on form DR-602

(Intangible Tax Application for Extension of Time to File Return, incorporated by reference in Rule 12C-2.0115, F.A.C.). The Department will inform taxpayers of requests that are denied.

3. All taxes paid after June 30 of the tax year with an extension of time are subject to interest as prescribed in Rule 12C-2.007, F.A.C.

(b) Examples:

1. A taxpayer requested and was granted an extension of time to file an intangible tax return and paid the tax. On September 30 of the tax year, intangible tax in the amount of \$100 is paid. No penalties are due because of the approved extension of time to file.

However, interest in the amount of \$3.00 is due. (See Rule 12C-2.007, F.A.C.)

Tax Due With Return \$100

2. A taxpayer is granted an extension of time to file an intangible tax return and pay the tax. The extension was granted through September 30 of the tax year. On October 1 of the tax year a return is filed and the intangible tax is paid. On this date the extension of time to file is void. The taxpayer is liable for all penalties and interest from the due date until the date paid. (See Rule 12C-2.007, F.A.C.)

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.042, 199.052, 199.135, 199.202, 607.1622 FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.05, Amended 11-21-91, 10-9-01, 5-4-03.

12C-2.006 Taxable Situs - Reporting Requirements - Who Shall File a Return.

(1)(a) Every person who is a legal resident of this state, or any person, regardless of domicile who has management or control of intangible personal property that has acquired a taxable situs in this state, shall file a return with the Department on or before June 30 except as provided in paragraphs 12C-2.005(1)(b) and (3), F.A.C.

(b)1. Individuals, married couples filing jointly, and guardians filing on behalf of their ward shall file on form DR-601I, Intangible Personal Property Tax Return (incorporated by reference in Rule 12C-2.0115, F.A.C.).

2. Corporations, partnerships, affiliated groups, and fiduciaries shall file on form DR-601IC, Intangible Personal Property Tax Return for Corporation, Partnership, and Fiduciary Filers (incorporated by reference in Rule 12C-2.0115, F.A.C.).

3. A group of corporations, Subchapter S corporations, or limited liability companies may choose to file as an affiliated group if they meet the following criteria:

a. An affiliated group has a common parent that directly owns at least 80% of all classes of stock or membership interest in a limited liability company and at least 80% of each class of nonvoting stock or membership interest in a limited liability company of one or more of the corporations or limited liability companies in the group. As used here, the term nonvoting stock or membership interest does not include stock or membership interests in a limited liability company that is limited and preferred as to dividends.

b. The affiliated group may be connected through a chain of ownership from the parent to the subsidiaries or from the parent to subsidiary to the subsidiary's subsidiary.

c. The election to file as an affiliated group must be made each year. A notice of the election must be filed with the Department on or before June 30 of the tax year. The election and notice is made by selecting the affiliated group filing status on form DR-601C. Failure to file the notice of the election shall bar the filing

of a consolidated return except as provided in this rule. An affiliated group which does not intend to file a consolidated return shall indicate its intent by filing separate returns for each entity subject to the intangible tax.

d. An affiliated group which has failed to file any returns for one year may choose to file a consolidated intangible tax return for one delinquent year provided the group has filed consolidated returns for the three immediate prior years. If timely returns were filed by members of the group, the group may not file a consolidated return after the due date for filing a consolidated return.

e. The parent entity files a consolidated return. This parent entity does not have to have a taxable situs in Florida. All subsidiaries that meet the ownership rule must be included in the consolidated group. Subsidiary entities that are foreign to the United States must be included in the consolidated group if the ownership test is met. When a consolidated return is filed, all accounts receivable between the entities that are part of the consolidated group return are to be eliminated. Also, the parent entities investments in subsidiaries that are included as part of the consolidated group are to be eliminated. Accounts receivable and the parent entities investments in subsidiaries that are not part of the consolidated group remain as items subject to the intangible tax.

The capital investment of the parent entity, owned by a member of the consolidated group, is not eliminated from taxation.

f. An affiliated group filing a consolidated return must include the following with the intangible tax return:

(I) A consolidated balance sheet for the group identifying the taxable items and the eliminated items.

(II) A separate balance sheet for each entity included in the consolidated group.

(III) A list identifying the parent entity's name, Employer Identification Number, state of charter and charter number, and

mailing address (including city, state and zip code) and the name, Employer Identification Number, state of charter and charter number, and mailing address (including city, state and zip code) for each entity included in the consolidated return.

4. Governmental Leasehold Estates are to be reported on form DR-601G, Governmental Leasehold Intangible Personal Property Tax Return for Individual and Joint Filers (incorporated by reference in Rule 12C-2.0115, F.A.C.).

Penalties 0

Interest 3

Total Due With Return \$103

Tax Due With Return \$100

Penalties: Delinquency (40%)

Late Filing (40%)

[Maximum delinquency and late filing

Penalty (40%)]

40

Interest 3

Total Due With Return \$143

- 361

(2) A person will be required to file completed returns even though that person may owe less than sixty dollars (\$60.00) tax, if that person is under audit, examination, or investigation by the Department.

(3) Trustees –

(a) For tax years beginning after December 31, 2000, trustees are no longer required to file intangible tax returns or pay a tax.

(b) For tax year 2000 and previous tax years, the taxable situs of a trust shall be in Florida if the trustee's usual place of business where the books and records pertaining to the trust are kept is in Florida or, if the trustee has no principal place of business, then taxable situs shall be determined as follows:

1. If a Florida resident is sole trustee of a foreign trust, the trust is deemed to have a taxable situs in Florida and the corpus is subject to tax.

2. If there is more than one trustee, and all are Florida residents, only one return is to be filed.

3. When trustees are both residents and nonresidents and management and control of the trust is with the Florida trustee, then a return for the trust is to be filed by the Florida trustee.

4. When trustees are both residents and nonresidents, and management or control is with an out of state trustee, then no return is necessary by the Florida trustee.

5. When there are two trustees, one is a resident and one a nonresident and they share equally in management and control of the trust, the assessment of property shall be apportioned between them.

6. When there are three or more trustees, and they are residents and nonresidents and they share equally in the management and control, the trust has a taxable situs in this state if the majority of the trustees are residents of this state. In such a case, only one return is to be filed for the trust. If the majority of the trustees are nonresidents, the trust does not have a taxable situs in this state and no return is to be filed.

(4) Grantor Subject to Tax - A Florida domiciled grantor of a trust is subject to intangible tax on an item of intangible personal property held as an item of trust principal under the following circumstances.

(a) The grantor retains the right to revoke the trust in whole or in part.

(b) The grantor has the power to appoint or direct distribution of trust principal, other than by naming or removing beneficiaries pursuant to a limited testamentary power to add beneficiaries other than the grantor, the grantor's creditors or creditors of the grantor's estate.

Example. Individual A, a Florida domiciliary, transfers \$100 to the sole trustee of the A trust under a written trust agreement.

Neither the trustee nor the trust are domiciled or transact business in Florida. The trust is irrevocable, and individual C is the sole beneficiary. The trust agreement provides that A may direct the trustee to distribute any item of trust property to any person other than A or A's creditors. The trust agreement also provides that any person may contribute property to the trust for no consideration, such property to be subject to the terms of the trust. On the last business day of a calendar year, A transfers all the shares of stock in ABC Corporation, with a just value of \$100 million, to the trust. On the first business day of the following calendar year, A appoints and directs the trustee to distribute the ABC stock to the B trust. The B trust contains the same provisions as the A trust, except that the B trust is revocable. Even if this A trust were found to be a valid (non-illusory) trust, A would be treated as having retained ownership, management and control of the ABC stock, and would be subject to tax on the ABC stock.

(c) The grantor has the right to veto or rescind, or must approve of, the trustee's actions with respect to the item of trust principal.

(d) The grantor has the right to remove or appoint trustees, or the right to remove or appoint another person with such a right, unless the power is limited to specific conditions not within the control of the grantor or such other person.

(e) In no circumstances shall the annual tax be due more than once each year upon a particular item of intangible personal property.

(5) Personal Representatives:

(a) Personal representatives domiciled in Florida must file a return for all property in their custody if the decedent was domiciled in Florida, or the laws of the decedent's domiciliary state allow the tax situs of a

decedent's estate to attach to the administrator after the letters of administration have been granted by a court.

(b) Personal representatives who are not residents of Florida, but are administering an estate of a decedent whose domicile was Florida, must file a return for the estate.

(6) Corporations: Every corporation electing to pay the tax as agent for its Florida stockholders must file a return by June 30 of the tax year, even if no tax is due with the return. If no return is filed or the return is filed after June 30, the election to pay the tax for stockholders will not be valid. Form DR-601C, Intangible Personal Property Tax Return (incorporated by reference in Rule 12C-2.0115, F.A.C.) is the form to be used when filing and paying the tax as agent for shareholders.

(7) Taxpayer Identification Number Required.

(a) Every return must list the Social Security number or Federal identification number of the property owner. An individual filer must list his or her Social Security number on the return. In the case of a joint return the Social Security numbers, if assigned, must be listed for both husband and wife. The husband's Social Security number is to be listed first on a joint return. Corporations, partnerships and fiduciaries are to list the employer identification number assigned by the Internal Revenue Service on the return.

(b) A fiduciary filing for more than one account must separately identify each account by the assigned taxpayer identification number.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.175, 199.202 FS. History– New 4-17-72, Revised 12-20-73, Amended 11-17-74, 9-27-76, 9-6-77, Formerly 12C-2.06, Amended 11-21-91, 1-5-94, 6-2-98, 10-9-01, 5-4-03.

12C-2.0061 Transfer of Intangible Personal Property to Certain Out-of-State Entities.

(1) This rule delineates certain circumstances in which intangible personal property would not have taxable situs in Florida.

This rule is intended to provide taxpayers with criteria under which intangible personal property may not be taxable. Failure to meet one or more of the following criteria does not create any presumption with respect to taxable situs or taxation of intangible personal property and means only that the taxpayer does not come within the guidelines of this rule. Taxable situs and taxability of intangible personal property held by taxpayers who fail to meet the following criteria will be judged upon the facts and circumstances applicable to the taxpayer. This rule does not provide the basis upon which an assessment can be made or sustained.

If an item of intangible personal property, which would otherwise be subject to the annual tax, is transferred to a corporation or partnership organized under the laws of another state and domiciled in another state, the item does not have taxable situs if each of the following criteria are met, both for the corporation or partnership and any general partner.

(2) The laws of each applicable jurisdiction, including those governing formation and operation, have been complied with.

(3) The transfer is complete before January 1 of the tax year.

(a) Transfer means conveyance of legal title to and all ownership of, including all rights to control and manage in Florida, the item of intangible personal property.

(b) Voluntary transfer of the item back to the transferor, or to any other person domiciled in Florida, after January 1 does not, by itself, cause the item to have taxable situs in Florida for that tax year.

(4) Neither the transferor, nor any person domiciled in Florida, owns the item or may exercise management or control of the item in Florida. All management and control of the item occurs outside of Florida, including communications and correspondence concerning the item.

(a) Officers, employees, and other agents of the transferee exercised management and control outside of Florida. They must perform functions consistent with the responsibility for management and control of the item outside of Florida.

(b) Presence or residence of a shareholder, partner, board member, officer, employee, agent, or representative, in Florida does not, by itself, cause an item of intangible personal property owned by the corporation or partnership to have taxable situs in Florida.

If, however, the shareholder, partner, board member, officer, employee, agent, or representative may exercise management or control with respect to that item while in Florida, other than a shareholder or limited partner acting solely in its capacity as shareholder or limited partner respectively, then that item does not come within the guidelines of this section.

(5) The transferee is not legally or commercially domiciled in Florida.

(6) The transferee is not transacting business in Florida.

Example – Corporation X transacts business in Florida. It sells an item of tangible personal property on credit to a natural person, John Smith, in Florida. John Smith is a Florida resident. As a result of the transaction, Corporation X has an account receivable from Smith. ABC is a partnership that is not related to Corporation X, that is not domiciled in Florida, and that does not transact any business in Florida. On December 1, 1997, in a transaction that occurs outside of Florida, Corporation X sells the receivable to ABC for its fair market value, and retains no interest in or obligation with respect to the receivable; however, Corporation X does retain an option to purchase the receivable should ABC offer it for sale. No further transactions occur during 1997. No person domiciled or transacting business in Florida owned, managed, or controlled the receivable when it was owned by ABC. In a transaction that occurs outside of Florida after January 1, 1998, ABC sells the receivable back to Corporation X for its fair market value, and retains no interest to the receivable. On January 1, 1998, the receivable did not have taxable situs in Florida.

(7) Terms and conditions of the transfer are those of an arm's length transaction. Sale of an item of intangible personal property

in exchange for its fair market value is one indication, though not conclusive, that the terms and conditions of the sale are those of

an arm's length transaction.

(8) Books and records must be kept and maintained by the transferee outside Florida.

(9) Books and records and financial statements of the transferor, the transferee, and any involved agent (e.g., broker) must show entries consistent with ownership, management and control by the transferee outside of Florida.

(10) Reporting and payment requirements, under applicable federal or state laws, that are associated with the sale or other transfer of the item of intangible personal property, must have been complied with consistent with ownership, management and control outside of Florida.

(11) Documentary evidence must be maintained that establishes that legal transfer was completed to the transferee corporation or partnership before January 1 of the tax year, that management and control existed and was exercised outside of Florida, and that the transfer meets each of the above requirements. Examples of documents and items that may contain evidence establishing a legal transfer include the following and any modifications thereto. The absence of one or more of the following documents and items does not mean that a taxpayer cannot otherwise establish that the taxpayer meets the criteria of this rule.

(a) Organizational documents filed with appropriate state officials.

(b) Formally and properly adopted by-laws, minutes and resolutions of meetings.

(c) The principal place of business of the transferee, where the business of the transferee is actually carried on, is held out to be and is in fact maintained outside of Florida.

(d) Receipts for transportation, meals and lodging.

(e) In the case of a security, notification to issuers and stock brokerage firms of change of ownership.

(f) In the case of an account receivable, notification to the obligor of change of ownership, management, and control.

(g) Officers and any other employees and/or other agents of the transferee receive compensation consistent with the responsibility for management and control of the assets.

(h) Maintenance by the transferee of an account with a bank or other financial institution in a state, other than Florida, where it maintains its principal place of business.

(i) Tax returns and proof of payment for federal tax and taxes of all applicable states.

(j) Any and all forms and records and fees required to be filed, kept or paid by federal law or the law of any relevant state.

(k) Contemporaneous written explanations of how transactions were effectuated, and why they are considered to be at "arms length."

(1) Contracts, sales agreements, invoices, and other instruments relevant to transactions.

(m) Evidence of consideration exchanged in the transfer of the item of intangible personal property and in other transactions related to it.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History-New 6-2-98.

12C-2.0062 Management or Control.

(1) This rule provides guidance on management and control for purposes of Rules 12C-2.0061 and 12C-2.0063, F.A.C., which describe certain circumstances in which an item of intangible personal property would not have taxable situs. This rule is also intended to provide taxpayers with separate criteria under which management or control would not exist with regard to intangible personal property. Taxable situs and taxability of intangible personal property held by taxpayers whose circumstances do not fall within the following provisions concerning management and control will be judged upon the facts and circumstances applicable to the taxpayer. This rule does not provide the basis upon which an assessment can be made or sustained.

(2) Control is power, authority, or right to exercise influence over an item of intangible personal property. Management is indicated by organizing, effecting or implementing control.

(a) The terms control or manage do not include any ministerial function or any processing activity. A ministerial function is an act the performance of which does not involve the exercise of discretion or judgment. A processing activity is an activity undertaken to administer or service intangible personal property in accordance with such terms, guidelines, criteria or directions as are provided solely by the owner of the property. Methods, systems, or techniques chosen by the processor to implement such terms, guidelines, criteria or directions are not considered the exercise of management or control.

(b) Except as provided in paragraph (2)(a) of this rule, management or control of an item of intangible personal property includes the possession or exercise, in whole or in part, of the right to:

1. Transfer or otherwise dispose of the item, including by selling, conveying, encumbering, assigning, delegating, alienating, or abandoning; or

2. Compromise, release, relinquish, or waive any right or claim with respect to the item.

(3) If a person exercises control or management of intangible personal property, that person will be considered to control or manage the property regardless of any written or oral agreements to the contrary. An isolated act by an employee, representative or agent without authority, does not by itself constitute management or control.

(4) Management or control of an item of intangible personal property does not include a shareholder or limited partner acting solely in its capacity as shareholder or a limited partner of a corporation or limited partnership, respectively, that owns the item.

Where an employee in the course of their employment exercises management or control over intangible personal property, the acts of the employee shall be attributed solely to the employer as if the employer has performed the acts.

(5) Servicing agreements. A servicing agreement, whereby the servicing agent performs ministerial functions or processing activities regarding intangible personal property, does not confer management or control over the intangible personal property on the servicing agent.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History-New 6-2-98.

12C-2.0063 Intangible Personal Property Held in Trusts.

(1) This rule delineates certain circumstances in which intangible personal property would not have taxable situs in Florida.

Failure to meet one or more of the following criteria does not create any presumption with respect to taxable situs. An item of intangible personal property, otherwise subject to tax, that is transferred to and held in a valid trust does not have taxable situs in Florida when each of the following criteria are met.

(2) The trust must be formed and operate pursuant to a fully executed and acknowledged written trust agreement, and the trust must be valid under the laws of the state in which it was created and laws governing the trust.

(a) The transfer of intangible personal property to the trust must be valid and complete prior to January 1 of the tax year.

Transfer means the conveyance of legal title to and all ownership of, including all rights to control and manage, the item of intangible personal property.

(b) The transfer of intangible personal property to a trust which would be deemed illusory under applicable laws is not a valid transfer for purposes of the intangible tax.

(3) The trustees must have been granted full fiduciary powers by the terms of the written trust agreement.

(4) The grantor is not a Florida domiciliary or must not have any right or privilege reserved to or granted for himself, with respect to any right of ownership, management or control of the trust or any item of trust principal.

(5) The trust beneficiary is not a Florida domiciliary or has no rights other than to receive distributions of income or distributions from trust principal at the discretion of the trustees.

(6) If the trust includes any of the following powers, an item of intangible personal property constituting trust principal is not within the guidelines of this rule that describe certain, but not all, circumstances in which items of intangible personal property would not have taxable situs in Florida:

(a) The grantor retains the right to:

1. Revoke the trust, or

2. Appoint assets out of the trust corpus, or

3. Name and/or remove beneficiaries (except pursuant to a limited testamentary power to add beneficiaries other than the grantor, the grantor's creditors or creditors of the grantor's estate).

(b) The grantor or any other Florida domiciliary has the right to remove the trustee, unless the power is limited to specific conditions not within the control of the grantor or such other person.

(7) A trust provision that requires the reversion of assets back to the grantor does not, in and of itself, make the property subject to tax unless the provision directs the form or type of assets that must be returned to the grantor. A grantor may include any person contributing assets to the trust.

Example. Individual A transfers \$100 to the sole trustee of a trust under a written trust agreement. Neither the trustee nor the trust are domiciled or transact business in Florida. The trust is irrevocable, and individual B is the sole beneficiary. B is domiciled in Florida. No powers are expressly reserved to A by the literal terms of the trust agreement. The trust agreement provides that any person may contribute property to the trust for no consideration, such property to be subject to the terms of the trust. The trust agreement requires that the trustee distribute to B, on the first business day following January 1 of each calendar year, all trust assets contributed and any additional principal in excess of the \$100. On the last business day of a calendar year, B transfers shares of stock in ABC Corporation, with a just value of \$100 million, to the trust. B

would be treated as the grantor with respect to the ABC stock for purposes of this rule. The ABC stock would not be within the guidelines of this rule, in that the ABC stock must be returned to B, the grantor.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Amended 10-9-01.

12C-2.007 Penalties and Interest.

(1) Delinquent Penalty.

(a) Any annual or nonrecurring tax which is not paid by the due date shall accrue a delinquent penalty of 10 percent of the tax due, per month or portion of a month, not to exceed a maximum of 50 percent of the tax due.

(b) Example:

1. Tax Return and payment postmarked July 5th of current tax year

2. Tax due \$100

(2) Late Filing Penalty.

(a) Any annual tax return not filed by the due date shall be charged a specific late filing penalty for each year or portion of a year the return remains unfiled. The late filing penalty accrues at the rate of 30 percent of the tax due with the return for each year or portion of a year until paid. This penalty is in addition to any other penalty which may be due.

(b) Example:

1. Tax return and payment postmarked July 5th of current tax year.

3. Calculation of Penalty:

3. Calculation of Penalty: Tax Due \$100.00

1 month late $(1 \times .10 = .10) \times 10$

Penalty \$10.00

2. Tax due \$100

Tax due \$100

Delinquency penalty \$10

Late filing penalty \$30

Tax & penalty due \$140

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(3) Beginning with tax year 1999 and thereafter, when a tax payment is delinquent and the tax return is filed after June 30 of the tax year, the maximum for the combined penalties shall be 10 percent per month, not to exceed a maximum of 50 percent of the tax due with the return.

(4) Omitted Property Penalty.

(a) Property which is omitted from a return shall be subject to a specific penalty of 30 percent of the tax due on the omitted property and is also subject to the delinquency penalty.

(b)1. Examples:

2. Same as Example 1. except omitted property was discovered during an audit 2 years after the tax was due.

Delinquent penalty

(5) Undervaluation Penalty.

(a) Property which has been reported at a value less than just value shall be subject only to a specific undervaluation penalty of 30% of the tax due attributed to the undervaluation.

(b) Example: Property reported at a value of \$100,000. Its just value is \$200,000.

Undervaluation penalty

(6) Penalty for Late Filing of a Security Position Statement.

(a) Security dealer/investment advisors who fail to timely file their Florida customer position statements are subject to an initial penalty of \$10 per customer position statement, plus the greater of 1% of the initial penalty or \$50 per month until the position statements are filed. The minimum penalty charged for failure to provide the customer position /statements is \$100.

(b) Security dealer/investment advisors who do not hold securities on account for customers must notify the Department that they do not hold securities for customers. Failure to provide this notice on or before June 30 will subject the security dealer/investment advisor to a \$100 penalty.

(c) Position statements which are submitted in a form which is not compatible with the Department's data processing equipment or which are inaccurate are not consider filed.

(7)(a) Interest. All taxpayers shall pay interest at the following rate:

1. One Percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.

2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule

12-3.0015, F.A.C., (prorated daily).

(b) Interest is due based on the amount of tax paid after June 30 of the tax year regardless of any extension of time granted by the Department for paying the tax or filing a return. Interest accrues on the unpaid tax beginning July 1 of the tax year and is calculated through and including the date of payment.

(8) Penalties for delinquency, late filing, undervaluation, or omission will be settled or compromised upon a showing by the taxpayer that the result was due to reasonable cause and not willful neglect as provided in Chapter 12-13, F.A.C. Interest cannot be waived unless there is doubt as to liability or collectability.

Specific Authority 199.202, 213.06(1), 213.21 FS. Law Implemented 199.052, 199.282, 213.235 FS. History–New 4-17-72, Revised 12-20-73Amended 9-27-76, 4-2-78, Formerly 12C-2.07, Amended 11-21-91, 5-18-93, 4-2-00, 10-9-01, 5-4-03.

12C-2.008 Information Reports.

(1) Each tax year, every corporation qualified or doing business in this state shall provide its Florida shareholders and the Department a written notification where applicable of the following:

Tax due on omitted property \$100 Delinquent penalty for 1 month \$10

Omitted property penalty (.30) \$30

Tax & penalty due \$140

Tax due on omitted property \$100

(50% Maximum) \$50

Omitted property penalty \$30

Tax & penalty due \$180

Tax due on undervaluation \$100

(100 × .30) \$30

Total Tax plus penalty \$130

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(a) The corporation's election to pay the tax as agent for its Florida shareholders. The notice shall be filed on an Intangible Personal Property Tax Return for Corporation, Partnership, and Fiduciary Filers (form DR-601C, incorporated by reference in Rule 12C-2.0115, F.A.C.) by completing Schedule E and checking the notification box. A copy of the notice given to Florida shareholders is to be attached to the return.

(b) On or before April 1 of the tax year, corporations electing to pay the tax as agent for shareholders shall notify their Florida shareholders in writing of the election to pay the intangible tax as agent for shareholders. A representative copy of the written notice is to be attached to form DR-601C and filed with the Department.

(2)(a)1. Security brokers are required to file a position statement for each customer for whom they hold securities whose mailing address is within the state.

2. Security brokers means those broker/dealers registered with the Department of Banking and Finance, Division of Securities for the purpose of selling securities in this state.

(b)1. The position statement shall contain all the information prescribed by Section 199.062(3), F.S., and shall be filed on magnetic medium unless a hardship is shown. In cases where hardships are established a paper copy of the position statement for each customer shall be sent to the department.

2. Examples of a hardship:

a. The broker/dealer does not have access to computer equipment; or

b. The broker/dealer has less than 100 customers.

(c) A broker/dealer claiming a hardship must contact the Florida Department of Revenue, Return Reconciliation, Building F,

5050 W. Tennessee Street, Tallahassee, Florida 32399-0100.

(3) Trustees and personal representatives shall file an information return when the beneficiary of the trust or estate reports the assets on his or her personal return. The return shall list all assets reported by the beneficiary and shall be on the form to be filed by a trustee or personal representative. Bank trust departments may satisfy the information return requirement by filing a list of trusts and the beneficiaries who have included the trust or estate assets on their personal return.

(4) Fiduciaries shall provide the department with a copy of all inventories, accountings, or amended inventories required to be filed with the court.

(5)(a) Personal representatives of estates shall file with the Department a copy of the Preliminary Notice and Report (form DR-301, incorporated by reference in Rule 12C-3.008, F.A.C.).

(b) Personal representatives of estates shall file with the Department a copy of the estate inventory, or amended inventory, whether or not an inventory is required to be filed with the court. They are to be mailed to: Florida Department of Revenue, Compliance Support, 4070 Esplanade Way, Room 335 R, Tallahassee, Florida 32399-0100. The Department of Revenue shall have 30 days following the service of the estate inventory or Federal Estate Tax Return (form 706) in which to file or amend a claim for taxes owed by the decedent.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.185, 607.1622, 733.702 FS. History–New 4-17-72,

Revised 12-20-73, Amended 4-21-75, Formerly 12C-2.08, Amended 7-31-90, 11-21-91, 1-5-94, 10-9-01, 5-4-03.

12C-2.010 Valuations.

(1) Annual Tax.

(a) Shares of stock of corporations regularly listed on any stock exchange or regularly traded over the counter shall be valued at their closing price on the last business day of the previous calendar year.

(b) Shares of stock of corporations which are subject to restrictions or are letter stock shall be valued based on the facts and circumstances of each case. Taxpayers owning shares of restricted stock, wishing to establish a discount prior to filing a return, may request a letter of technical advice or a technical assistance advisement.

(c) Shares of stock in corporations which are closely held and are not regularly traded over the counter, having no actual sales within a reasonable period of time, shall be valued using generally accepted valuation methods applied to the following valuation approaches:

1. Capitalization of earnings or dividends;

2. Weighted average of factors;

3. Adjusted book value;

4. In addition, consideration shall be given to the influence of the following factors on the marketability of the shares being valued:

a. The nature of the business;

b. The history of the enterprise;

c. The economic outlook in general;

d. The economic condition and outlook for the industry;

e. The book value of the stock;

f. The adjusted book value of the stock;

g. The financial condition of the business;

h. The earning capacity of the business;

i. The dividend paying capacity – whether or not the company has paid a dividend;

j. The company's value of goodwill or other intangible value;

k. The sales of the stock;

1. The size of the block to be valued; and

m. The market price of stocks of corporations in the same or similar line of business.

(d) Shares of stock of corporations subject to restrictive agreements – Where shares of stock were acquired subject to an option reserved by the issuing corporation to repurchase at a certain price, the option may represent the fair market value. If the option or buy and sell agreement, is the result of voluntary action by the stockholder and is binding during his life as well as at death, such an agreement may or may not fix the value, depending on the facts and circumstances of each case. Where the stockholder is free to dispose of his shares during his life and the option is to become effective only upon death, the fair market value is not limited to the option price.

(e) Shares of stock have no taxable value until issued.

(f) Treasury stock acquired by the corporation for a specific purpose is valued based upon the purpose for which it was acquired.

(g)1. The interest of a limited partner in a limited partnership registered with the Securities and Exchange Commission is to be valued at its traded market value when traded on an exchange or over-the-counter.

2. Those limited partnership interests having no current traded market value are to be valued at their acquisition cost.

3. A taxpayer who believes his limited partnership interest has a value less than the acquisition cost may submit evidence with his return to establish a lesser value.

4. The interest of a limited partner in a partnership which is organized as an investment fund is valued for tax purposes based only on the assets in the portfolio which are subject to tax under Chapter 199, F.S. For

example: The fund holds in its portfolio of assets U.S. Government Debt obligations (50%), State of Florida bonds (25%), Corporate bonds (15%), and other securities (10%).

The taxable value of an interest in this limited partnership (fund) would be 25% of the value of the limited partnership interest (net asset value).

(h) Accounts receivable shall be valued at their outstanding balance as of the close of business on the last day of the previous calendar year, less a deduction of a reasonable amount for uncollectible accounts. Such deduction shall be established by actual amounts or shown by the history of uncollectible accounts. This provision shall apply even if the business is on a cash basis accounting system. Cross Reference – subsection 12C-2.003(9), F.A.C.

(i) Notes not secured by realty – The fair market value of a note will be presumed to be the unpaid balance on January 1 of each year, unless it can be shown to the satisfaction of the department that the note has a value less than the unpaid balance on January 1.

(j) Business Trust – A money market or mutual fund which is organized under an agreement or indenture of trust shall be valued based upon the following guidelines to determine what portion, if any, of the net asset value of the trust will be exempt from taxation:

1. The portion of the net asset value of the trust that is attributable to direct obligations of the United States Government is exempt from taxation.

2. If the remaining portion of the net asset value of the trust, after removing the portion representing United States Government obligations, represents assets which are themselves exempt from Florida's intangible tax, then this portion of the net asset value of the trust's portfolio is also exempt from tax.

3. If the remaining portion of the net asset value of the trust, after removing the portion attributable to United States Government obligations, represents any asset which is taxable under Florida law, then the remaining portion of the net assets value of the trust is subject to tax.

(k) Bonds regularly traded on an exchange or over-the-counter are to be valued at their traded price. Bonds for which no traded value can be established can be valued at their face value.

(1) Taxpayers who feel that a security does not have a value equal to the published traded value at years end or whose security has no traded value may present evidence with their intangible tax return to establish a lesser value. Any value established by the taxpayer is subject to audit by the Department.

(m) Leasehold estates and possessory interest in governmental property -

1. The just value of a lessee's leasehold estate or possessory interest in governmental property described in subsection

12D-3.003(3), F.A.C., shall be determined by valuing the lease rental payments for the remaining term of the lease on January 1 of the tax year, subject to the following provisions:

a. The lease rental payments to be valued shall not include any amount for taxes, interest, insurance, repairs, maintenance, exclusive franchise or concession fees, costs of utilities, or similar charges required to be paid the lessor, and shall include only the amount paid by the lessee for the use of real or tangible property provided or owned by the governmental lessor, whether designated as a fixed sum, a percentage, or a variable amount.

b. If lease rental payments are nominal amounts, such as \$1 or \$10 per year, or the payments are significantly less than a fair market rental for the property, the annual fair market rent which would be paid by the lessee in the open market for comparable property under similar terms and circumstances shall be the lease rental payment to be valued.

c. If the lease rental payments required by the lease are based on some factor other than the passage of time, such as a percentage of sales or profits, the lease rental payment to be valued shall be based on the average annual rent actually paid by the lessee in prior years, providing the amount so determined is not nominal or significantly less than the fair market rental for the property. The average annual rental used shall be determined from the amounts paid by the lessee for a period not to exceed the previous five years. If the

average so determined is nominal or is significantly less than fair market value for the property, the lease rental payment to be discounted shall be the annual fair market rental for the property.

d. Otherwise, the analyzed lease rental payment required under the lease shall be the amount to be valued. The valuation factors to be used shall be based on the Federal Reserve discount rate – Atlanta – on the last business day of the preceding year, plus one percent.

e. The period for which the lease rental payments are to be valued shall be the number of years remaining under the lease, exclusive of renewal options, as of January 1 of the tax year. The year in which the lease will expire shall be considered a full year for the purpose of this rule.

f. If the final period for which the lease rental payment is to be valued is less than a year, the lease rental payment shall be valued using the 1 year value factor and the tax apportioned based on the number of months during the year that the lease is in effect.

2. Nothing in this paragraph exempts tangible personal property, buildings, or real property improvements owned by the lessee from ad valorem taxation. Such items are not includable in the just value of the lessee's interest in leased governmental property classified as intangible property. Cross Reference – Chapter 12D-3, F.A.C.

3. The following examples illustrate the provisions of this paragraph:

a. Lessee makes \$4,000.00 annual payments to lessor which includes \$1,000.00 tax on a lease with 10 years remaining and the Federal Reserve discount rate – Atlanta – is 11%. The value of the lessee's interest would be determined by discounting the net annual rent of \$3,000.00 for 10 years at 12%. This results in a taxable value of \$16,950.60.

b. A lessee has 10 years remaining on a percentage lease with an original term of 13 years and the Federal discount rate – Atlanta – is 11%. The lessee has paid \$5,000.00 in the first previous year, \$6,000.00 in the second previous year and \$4,000.00 in the third previous year. The value of the lessee's interest would be determined by averaging the prior payments of \$5,000.00, \$6,000.00, and \$4,000.00. The lessee's interest of \$5,000.00 would be discounted for 10 years at 12% or \$28,251.00.

(2) Nonrecurring Tax.

(a) All obligations for the payment of money, evidenced by note, bond, or deed of trust secured by a written specific lien on real property located in this state shall have a value equal to the principal amount of indebtedness at the time of execution.

(b) Agreements for deed constitute intangible property within the classification subject to the nonrecurring tax as a lien in equity on real property. The agreements for deed or contracts for deed shall be taxable at the principal amount of indebtedness at the time the agreement is executed.

(3) All other forms of intangible property not specifically covered by the preceding subsections of this section shall be valued in accordance with generally accepted valuation principles.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199, 199.023, 199.052, 199.103, 199.155 FS. History– New 4-17-72, Revised

12-20-73, Amended 9-27-76, 8-8-78, 12-31-80, Formerly 12C-2.10, Amended 11-21-91, 5-18-93, 10-9-01.

12C-2.0105 Tax Credits.

(1) Credit for taxes paid to another state.

(a) A credit is allowed every taxpayer subject to tax, other than a natural person, against the tax imposed on intangible personal property. The credit shall be allowed for an ad valorem intangible tax paid in a state other than Florida on intangible property which is also subject to intangible tax in Florida.

(b) The credit allowed is the lesser of the intangible tax paid to the other state or the intangible tax imposed by Florida on the same property.

(c) Persons claiming this credit shall attach to their intangible tax return a schedule of property which is subject to an ad valorem tax in Florida and another state. The schedule shall contain a description of the

property, its taxable value, the other state in which it is also subject to tax, the amount of tax imposed and paid to the other state and the amount of intangible tax imposed by Florida on the property.

(2) Credit allowed banks and savings associations -

(a) Banks and saving associations claiming this credit are to mark the box on the intangible tax return indicating that the return is for a bank or saving association.

(b) The credit is determined by subtracting the amount of credit allowed under Section 220.68, F.S., from 33 percent of the prior years intangible tax payment. The product of this subtraction is the amount of credit allowed. If the product is zero or a negative number no credit is allowed.

(c) The credit provided by this subsection applies only to tax year 1999 and previous tax years.

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.104, 199.106 FS. History–New 5-18-93, Amended 10-9-01.

12C-2.011 Administration.

Nonrecurring Tax – Payments made directly to Department.

(1) Only nonrecurring tax due on obligations or advances made under instruments which have been previously recorded or which are not normally recorded or which are not normally taxed at the time of recording may be paid directly to the Department.

This will include, but will not be limited to, tax payments due on an advance made under a future advance clause of a recorded mortgage on real property, advances made under a revolving line of credit secured by a recorded mortgage on real property, or the obligation created under an agreement or contract for deed.

(2) Persons paying the nonrecurring tax directly to the department shall use the format described below to report and pay the tax:

(a)1. Such report shall include the taxpayer's name, mailing address, city and state, and the taxpayer's identification number.

2. To identify the obligation for which tax is being paid the report shall also contain:

a. Name of obligor;

b. County in which the real property is located;

c. The official record book and page number of the recording if any;

d. Parcel number assigned by the county property appraiser or legal description;

e. Amount on which tax is being paid;

f. Date on which obligation or advance was made;

g. Amount of tax.

(b) Tax payments shall be mailed to Florida Department of Revenue, 5050 West Tennessee Street, Tallahassee, Florida

32399-0100 or may be presented to a local office of the Department of Revenue.

(3) Taxpayers may apply to the Department to pay the nonrecurring tax by list attached to a report.

(a) No person shall use this procedure without prior approval of the department.

(b) Persons wishing to apply for approval to report by list shall make requests to the Florida Department of Revenue, Central Registration, P. O. Box 6480, Tallahassee, Florida 32314-6480.

(c) All persons desiring or using this procedure shall be subject to audit and shall make their records available for inspection by the department.

(d) All persons approved to use this procedure shall keep a journal, account book or other record of original entry, showing a listing of all obligations or advances which have been made or executed. The journal shall

show a daily listing or a listing as required by the department and shall show the county of recording, the official record book and page number of the recording, if any, the amount of each obligation or advance, the date the obligation was created or advance was made and the amount of tax paid, and the date on which the tax payment was made.

(e) The list shall contain the same information as required by paragraph (2)(a) of this rule.

(4)(a) The authority to use this procedure shall not be unreasonably withheld by the department.

(b) However, any person having a history of delinquent tax payments for any tax or of returned checks shall be denied the use of this procedure.

(c) The authority to use this procedure may be canceled by the department when any person knowingly files a false report, fails or refuses, or neglects to file the proper report or fails to maintain proper records.

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.103, 199.133, 199.135, 199.222, 199.232, 199.292 FS. History–New 4-17-72,

Amended 9-26-77, 10-16-80, Formerly 12C-2.11, Amended 11-21-91.

12C-2.0115 Public Use Forms.

(1)(a) The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800) 352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center; or, 4) writing the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Department's TDD at (800) 367-8331 or (850) 922-1115.

Form Nu	umber Title		Effective Date
(2) DR-6010	G Governmental Lease	hold Intangible Personal Property Tax Retu	urn for 2011 02/11
	Tax Year (R. 01/11)		
(3) DR-6020	G Governmental Lease	hold Intangible Personal Property Tax App	lication for 01/10
	Extension of Time to	File Return (R. 01/10)	
(4) DR-350	111 Intangible Tax Self-A	Audit Worksheet (R. 06/07)	01/08
(5) DR-350	112 Taxpayer Affidavit (R. 06/01)	05/03

Rulemaking Authority 199.202(2), 213.06(1) FS. Law Implemented 119.071(5), 196.199(2), 199.032 (2005), 199.042 (2005), 199.103(7), 199.135 (2005), 199.202, 199.232, 199.282 (2005), 199.292, 213.24(3), 215.26 FS. History–New 11-21-91, Amended 1-5-94, 10-9-01, 5-4-03, 9-28-04, 6-28-05, 10-30-06, 1-28-08, 1-27-09, 1-31-10, 2-7-11.

12C-2.012 Refunds.

(1)(a) Any person entitled to a refund of intangible personal property taxes may seek a refund by filing an Application for Refund-Intangible Personal Property Tax (form DR-26I, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department.

Form DR-26I must be in accordance with the timing provisions of Section 215.26(2), F.S., and must meet the requirements of Section 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

(b)1. Form DR-26I, Application for Refund-Intangible Personal Property Tax, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

2. Form DR-26I, Application for Refund-Intangible Personal Property Tax, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

(2)(a) An automatic refund of the amount of overpayment of tax will be granted by the Department when the Department determines upon examination that an overpayment of the tax with the return has occurred, that no additional information is required to determine the correct amount of tax due, and that the overpayment of tax is in accordance with the timing provisions of Section 215.26(2), F.S.

(b) For example, an automatic refund will be granted by the Department when an examination of the return reveals that:

1. The discount pursuant to Section 199.042(2), F.S., has been understated.

2. The exemption provided in Section 199.185(2), F.S., has been understated.

3. The payment made with an Application for Extension of Time to File (form DR-602, incorporated by reference in Rule 12C-2.0115, F.A.C.) exceeds the amount of tax due when the return is filed; or

4. A mathematical error on the return, such as the use of an incorrect tax rate or other calculation error, results in an overpayment.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.042(2), 199.185(2), 199.232, 199.252, 213.255(2), (3), 215.26(2) FS. History–

New 4-17-72, Formerly 12C-2.12, Amended 11-21-91, 5-4-03, 9-28-04.

<u>12C-2.002</u> Property Subject to Tax – Annual and Nonrecurring.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.133, 199.135, 199.143, 199.145, 199.155, 199.175, 199.183, 199.185, 199.202 FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.02, Amended 11-21-91, 10-9-01, Repealed 1-28-08.

12C-2.003 Exemptions.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.183, 199.185, 213.12(2) FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, 4-21-75, Formerly 12C-2.03, Amended 11-21-91, 10-9-01, Repealed 1-28-08.

12C-2.004 Property Subject to Tax – Government Leasehold Estates and Nonrecurring.

(1) Tax on Government Leasehold Estates – All leases of government-owned property are subject to tax if rental payments are due as consideration for the lease. (The tax is imposed every year.)

(2)(a) A nonrecurring tax is imposed at the rate of \$2.00 per thousand dollars (2 mills) of the value of a note or other obligation for payment of money that is secured by a mortgage, deed of trust, or other lien on Florida real property.

(b) The following are examples of property subject to the nonrecurring tax:

1. Agreements or contracts for deed.

2. Agreements not to encumber real property if the agreement attaches as a lien on the real property.

3. Future Advances – to the extent secured by a lien on Florida real property.

4. Line of Credit – to the extent secured by a lien on Florida real property, as described in Section 199.143, F.S.

(c) Example: Note and mortgage given to secure loan with a principal amount of \$1,000,000. Tax computation:

Principal	\$1,000,000.00
Tax rate	x .002

\$2,000.00

(3)(a) Where a note, bond or other obligation for the payment of money is secured by realty located both inside and outside of the state and by personal property located both inside and outside of the state, the nonrecurring tax is required to be apportioned based on each type of property's relative percentage of the principal amount of debt at the time the obligation is created.

(b) Example: Note and mortgage given to secure a loan of \$1,000,000. The mortgage includes real property located in and out of Florida as well as personal property located in and out of Florida.

Value	Percentage	Tax
\$250,000.00	25%	\$500.00(*)
250,000.00	25%	- 0 -
500,000.00	50%	N/A
250,000.00	25%	0(**)
250,000.00	25%	0(**)
500,000.00	50%	0(**)
\$1,000,000.00	100%	
	\$250,000.00 250,000.00 500,000.00 250,000.00 250,000.00 500,000.00	\$250,000.00 25% 250,000.00 25% 500,000.00 50% 250,000.00 25% 250,000.00 25% 500,000.00 25% 500,000.00 50%

(*) Nonrecurring 2 mill tax

(**) There is no tax on personal property.

Tax due

(4)(a) Where the value of real property pledged to secure an obligation is less than the balance of the obligation, the amount of the obligation secured by the value of Florida real property is subject to the nonrecurring tax.

(b) Example:

Principal Amount of Loan	\$1,000,000.00
Less Value of Florida Real Property	-500,000.00
Amount subject to nonrecurring tax	\$ 500,000.00

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.133, 199.135, 199.143, 199.145, 199.155, 199.183 FS. History–New 4-17-72, Revised 12-20-73, Amended 5-8-79, Formerly 12C-2.04, Amended 11-21-91, 5-18-93, 10-9-01, 1-28-08.

12C-2.005 Reporting Requirements – Due Date - Payment of Tax – Discounts Allowed.

(1) Governmental Leasehold -

(a)1. Every person, regardless of domicile, who leases property from a governmental entity in this state, is required to file a return with the Department. All intangible personal property subject to tax is required to be assessed at its value as of January 1 of each year. The tax is to be reported on a Governmental Leasehold Intangible Personal Property Tax Return (Form DR-601G, incorporated by reference in Rule 12C-2.0115, F.A.C.). The return and the tax are due on or before June 30 of each year.

2. A return, accompanied with tax due, for the current tax year, that is postmarked or delivered to the Department on or before June 30 of the tax year will be considered timely filed. A return that bears a postmark, or is delivered to the Department, after June 30 of the tax year is delinquent. When June 30 falls on a Saturday, Sunday, or legal holiday, returns postmarked or delivered to the Department on the next succeeding workday will be filed timely. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

3. The following discounts may be claimed for early payment when the return and payment are postmarked or delivered to the Department on or before the last day of the month of the following periods:

a. 4% during January and February;

b. 3% during March;

c. 2% during April;

d. 1% during May;

e. No discount during June.

4. The postmark date will determine the date of payment for payments mailed to the department. If no postmark is available, the date indicated by the taxpayer on the return signature line or the date of delivery to the Department will be the date of payment.

(b) When the tax due, before discount, is less than \$60, no return is required to be filed and no tax is due. Taxpayers who receive a Government Leasehold Intangible Personal Property Tax Return (Form DR-601-G) from the Department for which no tax is due may file the return, without payment, to inform the Department that no tax is due. Filing this information return will eliminate additional inquiries from the Department regarding the filing of the return. Taxpayers who are under audit, examination, or investigation by the Department will be required to file a completed return, even if the amount of tax due with the return is less than sixty dollars (\$60).

(2) Nonrecurring Tax -

(a) The nonrecurring 2 mill tax on notes, bonds and other obligations for the payment of money which are secured by mortgage, deed of trust or other lien on Florida real property is due and payable at the time the instrument is presented for recordation.

(b) If there is no written instrument, or if the written instrument is not presented for recordation, the nonrecurring tax of 2 mills is due and payable within 30 days following the creation of the obligation.

(c) If a mortgage, deed of trust, or other instrument evidencing a lien subject to the nonrecurring tax secures a revolving line of credit, a line of credit, or future advances, the tax is due, as provided in paragraphs (a) and (b) on the initial debt or obligation, excluding future advances. Thereafter, each time a future advance is made under a future advance mortgage additional nonrecurring tax is due.

(3) Extension of Time for Filing Government Leasehold Tax Return -

(a)1. The Department will grant an extension of time of 3 months for filing a return or reporting and paying the tax when it is determined there is reasonable cause for granting the extension. Reasonable cause for the purpose of administering these provisions shall be deemed to be one of the following:

a. Having been granted an extension of time to file federal income taxes. A copy of the extension from the Internal Revenue Service must accompany the request for extension of time; or

b. A tax payment of 100% of last year's intangible tax or 90% of the current year's tax accompanies the request for extension; or

c. The records necessary to complete the return are not available due to fire, illness or death of the person having the knowledge to complete the return; or

d. Reasonable cause is established under the provisions of Rule 12-13.007, F.A.C.

2. All requests for extensions of time, for filing returns or reporting and paying the tax, must be filed with the Department on a Governmental Leasehold Intangible Personal Property Tax Application for Extension of Time to File Return (Form DR-602G, incorporated by reference in Rule 12C-2.0115, F.A.C.) and must be received by the Department on or before June 30 of the tax year. The Department will notify taxpayers only if the request is denied.

3. The extension of time covers the period July 1 through September 30. No penalty will be assessed if the return is filed and the tax due is paid on or before September 30 of the tax year. All taxes paid after June 30 of the tax year are subject to interest as provided in Rule 12C-2.007, F.A.C. Interest will be assessed on tax paid after June 30, including those taxes for which an extension of time to file and pay has been granted.

(b) Examples:

1. A taxpayer requested and was granted an extension of time to file a tax return and paid the tax due with the return. The extension was granted through September 30 of the tax year. On September 30 of the tax year, intangible tax in the amount of \$100 is paid. No penalties are due because of the approved extension of time to file. However, interest in the amount of \$3.00 is due. (See Rule 12C-2.007, F.A.C.)

Tax Due With Return	\$100
Penalties	0
Interest	3
Total Due With Return	\$103

2. A taxpayer is granted an extension of time to file a tax return and pay the tax due with the return. The extension was granted through September 30 of the tax year. On October 1 of the tax year a return is filed and the intangible tax is paid. On October 1, the extension of time to file is void. The taxpayer is liable for all penalties and interest from June 30 of the tax year until the date paid. (See Rule 12C-2.007, F.A.C.)

Tax Due With Return	\$100
Penalties: Delinquency (40%)	
Late Filing (40%)	
[Maximum delinquency and late filing Penalty (40%)]	40
Interest	3
Total Due With Return	\$143

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.135 FS. History–New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.05, Amended 11-21-91, 10-9-01, 5-4-03, 1-28-08.

12C-2.006 Taxable Situs – Reporting Requirements – Who Shall File a Return.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.175, 199.202 FS. History– New 4-17-72, Revised 12-20-73, Amended 11-17-74, 9-27-76, 9-6-77, Formerly 12C-2.06, Amended 11-21-91, 1-5-94, 6-2-98, 10-9-01, 5-4-03, Repealed 1-28-08.

12C-2.0061 Transfer of Intangible Personal Property to Certain Out-of-State Entities.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Repealed 1-28-08.

12C-2.0062 Management or Control.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Repealed 1-28-08.

12C-2.0063 Intangible Personal Property Held in Trusts.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Amended 10-9-01, Repealed 1-28-08.

12C-2.007 Penalties and Interest.

(1) Delinquent Penalty. A delinquent penalty of 10 percent of the tax due, per month or portion of a month, will accrue on the governmental leasehold estates intangible tax and the nonrecurring intangible tax that is not paid on or before the due date. The delinquent penalty will not exceed 50 percent of the tax due.

(2) Late Filing Penalty. A late filing penalty of 10 percent of the tax due, per month or portion of a month, will accrue on governmental leasehold estates intangible tax returns not filed on or before the due date. The late filing penalty will not exceed 50 percent of the tax due.

(3) The combined penalties provided in subsections (1) and (2) will not exceed 10 percent of the tax due per month, or portion of a month, and is limited to 50 percent of the tax due.

(4) Undervaluation Penalty. Governmental leasehold estate property which has been reported at an amount less than market value is subject to a specific undervaluation penalty of 10 percent of the tax due attributed to the undervaluation.

(5)(a) Interest accrues at the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C., (prorated daily).

(b) Interest is due based on the amount of tax paid after June 30 of the tax year regardless of any extension of time granted by the Department for paying the tax or filing a return. Interest accrues on the unpaid tax beginning July 1 of the tax year and is calculated through and including the date of payment. *Specific Authority 199.202, 213.06(1), 213.21 FS. Law Implemented 196.199(2)(b), 199.282, 213.235 FS. History–New* 4-17-72, *Revised 12-20-73, Amended 9-27-76, 4-2-78, Formerly 12C-2.07, Amended 11-21-91, 5-18-93, 4-2-00, 10-9-01, 5-4-03, 1-28-08.*

12C-2.008 Information Reports.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.185, 607.1622, 733.702 FS. History–New 4-17-72, Revised 12-20-73, Amended 4-21-75, Formerly 12C-2.08, Amended 7-31-90, 11-21-91, 1-5-94, 10-9-01, 5-4-03, Repealed 1-28-08.

12C-2.010 Valuations.

(1) Leases of Governmental Property.

(a) The value of a lease of governmental property described in subsection 12D-3.003(3), F.A.C., is determined by valuing the lease payments for the remaining term of the lease on January 1 of the tax year, subject to the following provisions:

1. The lease payments to be valued do not include any amount for taxes, interest, insurance, repairs, maintenance, exclusive franchise or concession fees, costs of utilities, or similar charges required to be paid the lessor, and include only the amount paid by the lessee for the use of real or tangible property provided or owned by the governmental lessor, whether designated as a fixed sum, a percentage, or a variable amount.

2. If lease payments are nominal amounts, such as \$1 or \$10 per year, or the payments are significantly less than a fair market rental for the property, the annual fair market rent which would be paid by the lessee in the open market for comparable property under similar terms and circumstances will be the lease payment to be valued.

3. If payments required by the lease are based on some factor other than the passage of time, such as a percentage of sales or profits, the lease payment to be valued will be based on the average annual rent actually paid by the lessee in prior years, providing the amount so determined is not nominal or significantly less than the fair market rental for the property. The average annual rental used will be determined from the amounts paid by the lessee for a period not to exceed the previous five years. If the average so determined is nominal or is significantly less than fair market value for the property, the lease payment to be discounted will be the annual fair market rental for the property.

4. Otherwise, the analyzed lease payment required under the lease is the amount to be valued. The valuation factors to be used shall be based on the Federal Reserve discount rate – Atlanta – on the last business day of the preceding year, plus one percent.

5. The period for which the lease payments are to be valued shall be the number of years remaining under the lease, exclusive of renewal options, as of January 1 of the tax year. The year in which the lease will expire shall be considered a full year for the purpose of this rule.

6. If the final period for which the lease payment is to be valued is less than a year, the lease payment shall be valued using the 1 year value factor and the tax apportioned based on the number of months during the year that the lease is in effect.

(b) Nothing in this paragraph exempts tangible personal property, buildings, or real property improvements owned by the lessee from ad valorem taxation. Such items are not includable in the value of the lessee's interest in leased governmental property classified as intangible property. Cross Reference – Chapter 12D-3, F.A.C.

(c) The following examples illustrate the provisions of this paragraph:

1. Lessee makes \$4,000.00 annual payments to lessor that includes \$1,000.00 tax on a lease with 10 years remaining and the Federal Reserve discount rate – Atlanta – is 11%. The value of the lessee's interest is determined by discounting the net annual rent of \$3,000.00 for 10 years at 12%. This results in a taxable value of \$16,950.60.

2. A lessee has 10 years remaining on a percentage lease with an original term of 13 years and the Federal discount rate – Atlanta – is 11%. The lessee has paid \$5,000.00 in the first previous year, \$6,000.00 in the second previous year and \$4,000.00 in the third previous year. The value of the lessee's interest would be determined by averaging the prior payments of \$5,000.00, \$6,000.00, and \$4,000.00. The lessee's interest of \$5,000.00 would be discounted for 10 years at 12% or \$28,251.00.

(2) Nonrecurring Tax.

(a) All obligations for the payment of money, evidenced by note, bond, or deed of trust secured by a written specific lien on real property located in this state are valued at an amount equal to the principal amount of indebtedness at the time of execution.

(b) Agreements for deed constitute intangible property within the classification subject to the nonrecurring tax as a lien in equity on real property. The agreements for deed or contracts for deed are taxable at the principal amount of indebtedness at the time the agreement is executed.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.155 FS. History–New 4-17-72, Revised 12-20-73, Amended 9-27-76, 8-8-78, 12-31-80, Formerly 12C-2.10, Amended 11-21-91, 5-18-93, 10-9-01, 1-28-08.

12C-2.0105 Tax Credits.

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.104, 199.106 FS. History–New 5-18-93, Amended 10-9-01, Repealed 1-28-08.

12C-2.011 Administration.

(1) Nonrecurring Tax – Payments made directly to Department.

Only nonrecurring tax due on obligations or advances made under instruments which have been previously recorded or which are not normally recorded or which are not normally taxed at the time of recording may be paid directly to the Department. This will include, but will not be limited to, tax payments due on an advance made under a future advance clause of a recorded mortgage on real property, advances made under a revolving line of credit secured by a recorded mortgage on real property, or the obligation created under an agreement or contract for deed.

(2) Persons paying the nonrecurring tax directly to the Department are required to file a report using the format described below to report and pay the tax:

(a)1. Include the taxpayer's name, mailing address, city and state, and the taxpayer's identification number.

2. Identify the obligation for which tax is being paid, including the following:

a. The name of the obligor;

- b. The county in which the real property is located;
- c. The official record book and page number of the recording, if any;
- d. The parcel number assigned by the county property appraiser or legal description;

e. The amount on which tax is being paid;

f. The date on which obligation or advance was made; and

g. The amount of tax.

(b) Taxpayers must mail these tax payments to the Florida Department of Revenue, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100 or may be presented to a local office of the Department of Revenue.

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.133, 199.135, 199.232, 199.292 FS. History–New 4-17-72, Amended 9-26-77, 10-16-80, Formerly 12C-2.11, Amended 11-21-91, 1-28-08.

12C-2.0115 Public Use Forms.

(1)(a) The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center; or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

aring of speech input ments may can the Department's TDD at (000)507 0551 of (050)522 1115.			
	Form Number	Title	Effective Date
(2)	DR-601G	Government Leasehold Intangible Personal Property Tax Return for 2009	01/09
		Tax Year (R. 01/09)	
(3)	DR-602G	Governmental Leasehold Intangible Personal Property Tax Application for	01/09
		Extension of Time to File Return (R. 01/09)	
(4)	DR-350111	Intangible Tax Self-Audit Worksheet (R. 06/07)	01/08
(5)	DR-350112	Taxpayer Affidavit (R. 06/01)	05/03

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 196.199(2), 199.135, 199.232, 199.292 FS. History– New 11-21-91, Amended 1-5-94, 10-9-01, 5-4-03, 9-28-04, 6-28-05, 10-30-06, 1-28-08, 1-27-09.

<u>12C-2.012</u> Refunds.

(1)(a) Any person entitled to a refund of intangible personal property taxes may seek a refund by filing an Application for Refund-Intangible Personal Property Tax (Form DR-26I, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26I must be in accordance with the timing provisions of Section 215.26(2), F.S., and must meet the requirements of Section 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

(b) Form DR-26I, Application for Refund-Intangible Personal Property Tax, must be filed with the Department within three (3) years after the date the tax was paid.

(2)(a) An automatic refund of the amount of overpayment of tax will be granted by the Department when the Department determines upon examination that an overpayment of the tax with the return has occurred, that no additional information is required to determine the correct amount of tax due, and that the overpayment of tax is in accordance with the timing provisions of Section 215.26(2), F.S.

(b) For example, an automatic refund will be granted by the Department when an examination of the return reveals that:

1. The discount pursuant to Section 199.042(2), F.S. (2005), has been understated.

2. The payment made with a Governmental Leasehold Intangible Personal Property Tax Application for Extension of Time to File Return (Form DR-602G, incorporated by reference in Rule 12C-2.0115, F.A.C.) exceeds the amount of tax due when the return is filed; or

3. A mathematical error on the return, such as the use of an incorrect tax rate or other calculation error, results in an overpayment.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.232, 213.255(2), (3), 215.26(2) FS. History–New 4-17-72, Formerly 12C-2.12, Amended 11-21-91, 5-4-03, 9-28-04, 1-28-08.