

CORPORATE PAYMENT OF FLORIDA STOCKHOLDERS' INTANGIBLE TAX - NOT A SIMPLE DECISION!

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In Florida, individuals, partnerships, corporations and limited liability companies are subject to intangible personal property tax. The tax is payable each year by individuals residing in Florida on January 1 and by Florida corporations and foreign corporations authorized to do business in Florida, who on January 1 own, control, or manage intangible personal property valued in excess of the exempted amounts.

Corporate Election to "a Stockholders' Tax." A corporation subject to the tax may elect to pay the tax on its shares that are held by Florida residents as part of the corporation's own tax return for its own intangible personal property. To make the election, the corporation must: (a) file a written notice with the Florida Department of Revenue on or before June 30 of the year for which the election is made; (b) file an annual return covering both such stock and the corporation's own intangible personal property; and (c) furnish its Florida stockholders with written notice, on or before April 1 of the year for which the election is made, that the election is being made, including a description of the class or classes of stock which are affected.

Potential Benefits and Detriments of the Election. In some instances, the assumption of this obligation by a corporation maybe highly beneficial to the Florida stockholders. In view of the recent increase in exemptions from the tax, in several cases this assumption of the stockholders' intangible tax obligation can eliminate part or even all of the intangible tax obligation of the stockholders. For example, to the extent that the corporation's total intangible property value is less than its exemptions for the tax, by assuming its Florida stockholders' tax obligations that will be "absorbed" by the corporation's own exemptions, it relieves those stockholders of that tax burden and it does so without having to actually pay the tax that it saves the stockholders from paying. On the other hand, to the extent that a corporation has non-Florida stockholders and stockholders who are not subject to Florida's intangible tax, complications arise as to whether it would be useful, or even appropriate, for the corporation to assume this tax burden. In some circumstances, a corporation's election to pay its Florida stockholders' intangible taxes actually could result in a greater tax liability than would otherwise exist or may unwittingly result in economic benefits that may unduly favor some stockholders over others.

The "Bottom Line." The tax election by corporations to pay the Florida intangible tax on its shares held by Florida residents certainly appears on its face to be both a convenience and a benefit. However, as noted above, there may be serious liability and tax traps for the unwary. A careful analysis of each of the stockholders and their various intangible tax obligations is necessary to make a good decision on whether the corporation should pay the intangible tax attributable to its stock.