Florida Law Review

Volume 2 | Issue 2 Article 6

January 1949

Intangible Personal Property Tax: Limited Revenue Producing Ability

Thomas J. Caroll

1. There can be a complete prohibition of "loud and raucous" sound equipment on the streets.[21]
2. An ordinance giving a public official the power to exercise unregulated censorship over the use of sound equipment may constitute a violation of freedom of speech, on the basis of the *Saia* case.[22]

The ratio decidendi of *Saia* has been seriously undermined by *Kovacs*, but the former has not been specifically overruled. While one applauds the insistence of Justices Rutledge and Black on accurate draftsmanship of ordinances, especially those with a penal flavor, the majority is to be commended for returning from the metaphysical "freedoms" of *Saia* to a recognition of the realities of life as it is actually lived in cities. Sheer volume of sound is not thought; free speech does not include the right to force others to listen; and the citizens can still protect themselves against notorious public nuisances by methods having no tendency to interfere with free thought and normal expression.

MORRIE BENSON
EDWARD S. RESNICK

LEGISLATIVE NOTES

INTANGIBLE PERSONAL PROPERTY TAX: LIMITED REVENUE PRODUCING ABILITY

Florida Statutes, c. 199 (1941)

A state that constitutionally denies itself the right to levy income taxes,[1] estate or inheritance taxes on residents in excess of the credit the United States may allow on similar taxes,[2] or state ad valorem taxes on real

[21]Under the authority of the *Kovacs* case, this is limited to equipment on the street itself and in actual operation.

[22]But see Note, 2 U. OF FLA. L. REV. 103, 113 (1949).

[1]FLA. CONST. Art. IX, §11.

[2]FLA. CONST. Art. IX, §11, as amended 1930, following Florida v. Mellon, 273 U. S.

or tangible personal property,[3] may expect revenue problems. The state of Florida has retained,[4] however, and does exercise,[5] the power to levy an intangible personal property tax; and the current demand for increased revenue suggests a study of the operation of the laws covering this tax, in order to determine its success as a revenue producer.[6]

The statutes define[7] intangible personal property, classify[8] it, and prescribe different rates[9] for the classifications. So long as rate differences on tangible and intangible personal property exist, questions as to whether certain property is tangible or intangible can be expected.[10] Classes

---

12 (1927). Supplementing statutes are FLA. STAT. §198.02 (1941) (resident decedents) and FLA. STAT. §198.03 (1941) (non-resident decedents).

[3]FLA. CONST. Art. IX, §2.

[4]The prohibitions of other taxes in FLA. CONST. Art. IX, §1, as amended in 1924 and 1944, specifically except this tax. State *ex rel.* Watson v. Lee, 157 Fla. 62, 24 So.2d 798 (1946), held that the tax is not affected by Sections 2 and 5, Art. IX, and that appropriations for purposes of general and local concern do not collide with the general rule laid down in Amos v. Mathews, 99 Fla. 1, 65, 126 So. 308, 331 (1930), that state taxes cannot be used for an exclusively county purpose. Distribution of the revenue is covered by FLA. STAT. §199.31 (Cum. Supp. 1947). The amendment of 1924 was not self-executing; and until the Legislature acted to put it into practical operation on January 1, 1932, the intangibles were treated in the same manner as other personal property. Porter v. First Nat. Bank of Panama City, 96 Fla. 740, 119 So. 130 (1928).

[5]FLA. STAT. §§199.01-199.32 (1941), as amended, FLA. STAT., c. 199 (Cum. Supp. 1947).

[6]Receipts for 1946-47 ran a little over $3,000,000, with cost of collection about 10%. MAJOR STATE TAXES, INSTITUTE OF GOVERNMENT 37 (1948). The booklet contains an excellent report on major Florida state taxes, with a critical analysis by the Department of Public Administration, Florida State University, Tallahassee.

[7]FLA. STAT. §199.01 (1941): ". . . all personal property which is not in itself intrinsically valuable but which derives its chief value from that which it represents...."

[8]FLA. STAT. §199.02 (Cum. Supp. 1947).

[9]Intangibles are specifically excepted from the requirement of uniformity and equality by FLA. CONST. Art. IX, §1, but the rate is limited to two mills on the dollar of assessed valuation. FLA. STAT. §199.11 (Cum. Supp. 1947) rates the classifications as follows: (1) Class A, one twentieth of one mill on the dollar of the taxable value; (2) Class B, one mill on the dollar of the taxable value; (3) Class C, three mills on the dollar of the taxable value, which taxable value shall be the principal amount of the indebtedness; (4) Class D, catch-all section, one mill on the dollar of the taxable value. FLA. STAT. §199.05 (1941) provides that intangible personal property shall be assessed at its full cash value.

[10]Schleman v. Guaranty Title Co., 153 Fla. 379, 15 So.2d 754 (1943), held abstract books tangible rather than intangible personal property.

A,[11] B[12] and D[13] are subject to an annual levy, while Class C[14] is taxed only once. Though Class C resembles an excise tax for the privilege of recording the instrument, the fact that it is an intangible personal property tax, with the act of recording merely the occasion for levying the tax on the property, has been reaffirmed.[15]

Jurisdiction is the main problem encountered in the enforcement of this tax, and no one principle of jurisdiction can be stated that will apply to all intangibles.[16] The cases run from outright ownership of intangibles by residents,[17] to varying proprietary interests in trusts,[18] and include prob-

[11]FLA. STAT. §199.02(1) (Cum. Supp. 1947): ". . . all moneys, United States legal tender notes, bank deposits of all kinds, certificates of deposits, cashiers' and certified checks, bills of exchange, drafts, and money placed with savings, building and loan associations."

[12]FLA. STAT. §199.02(2) (Cum. Supp. 1947): ". . . all stocks, or shares of incorporated or unincorporated companies; all bonds, except bonds of the several municipalities, counties and other taxing districts of the State of Florida, and except bonds of the United States government and its agencies; . . . and the beneficial interest of residents of Florida in trust estates of all kinds when the trustee resides outside the State of Florida, or if the trustee is a corporation and has its principal place of business outside of the State of Florida; provided, that if the trustee returns to the tax assessor such beneficial interest and pays the tax thereon to the tax collector in Florida, then the owner of such beneficial interests shall not be required to return the same for taxation; provided, further, that when the trustee is a resident of Florida and returns the corpus of the trust for taxation as provided by law there shall be no tax upon the beneficial interest in such trust."

[13]FLA. STAT. §199.02(4) (Cum. Supp. 1947): ". . . all other intangible personal property not embraced in classes A, B or C."

[14]FLA. STAT. §199.02(3) (Cum. Supp. 1947): ". . . all notes, bonds and other obligations bearing date subsequent to December 31, 1941, for payment of money which are secured by mortgage, deed of trust or other liens upon real property situated in Florida; provided, that only that part of the value of the mortgage, deed of trust, or other lien, the real property of which is located within the state shall bear to the whole value of the real property described in said obligation shall be included."

[15]State *ex rel.* Seaboard A. L. Ry. v. Gay, 35 So.2d 403 (Fla. 1948).

[16]Lowndes, *Bases of Jurisdiction in State Taxation of Inheritances and Property*, 29 MICH. L. REV. 850, 871 (1931).

[17]Hunt v. Turner, 54 Fla. 654, 45 So. 509 (1907) (stating the general rule that the personal property of a person domiciled in a given state has its situs in that state in contemplation of law and is taxable there); Starkey v. Carson, 138 Fla. 301, 189 So. 385 (1939) (holding a resident liable for the tax on all his intangible personal property, wherever located, no business situs of such property elsewhere being duly shown).

[18]Mahan v. Lummus, 35 So.2d 725 (Fla. 1948); Burrows v. Hagerman, 159 Fla. 826, 33 So.2d 34 (1947); Owens v. Fosdick, 153 Fla. 17, 13 So.2d 700 (1943); Wood v. Ford, 148 Fla. 66, 3 So.2d 490 (1941).

lems involving foreign concerns doing business in Florida[19] as well as debts secured by Florida realty but owed to residents of other states.[20]

Although logical and practical distinctions between estate and property taxes exist, the tendency in other jurisdictions has been to apply the holdings interchangeably when intangibles are involved.[21] With jurisdiction to levy a death transfer tax broadened[22] and federal constitutional objections to multiple taxation removed,[23] the only barrier to multiple taxation of intangibles remains in the discretion of the states themselves. Decisions recognizing the authority of states to levy intangible personal property taxes on meager jurisdictional bases have suggested reciprocal statutory tax provisions.[24] Florida has such a reciprocal statute on in-

---

[19]Gay v. Bessemer Properties, Inc., 159 Fla. 729, 32 So. 2d 587 (1947); Smith v. Lummus, 149 Fla. 660, 6 So.2d 625 (1942), 153 Fla. 415, 14 So.2d 897 (1943).

[20]State *ex rel.* Seaboard A. L. Ry. v. Gay, 35 So.2d 403 (Fla. 1948).

[21]A Pennsylvania property tax upon the equitable interest of a resident in a trust of intangibles in New York was upheld in Stewart v. Pennsylvania, 312 U. S. 649 (1941), *affirming* 338 Pa. 9, 12 A.2d 444 (1940). The Pennsylvania court relied on Curry v. McCanless, 307 U. S. 357 (1939) (reserved power of appointment over trust property) and Graves v. Elliott, 307 U. S. 383 (1939) (reserved power of revocation), both cases upholding the right of the settlor's domicile to include corpus of foreign trust in his estate for tax purposes as well as the right of the state in which the trust was located to tax the transfer.

[22]Utah v. Aldrich, 316 U. S. 174, 180 (1942), approving "extension of benefit" or "exercise of the state law to effect the transfer" as sufficient to enable a state to levy a death transfer tax on intangibles.

[23]Utah v. Aldrich, 316 U. S. 174 (1942).

[24]Greenough v. Tax Assessors of Newport, 331 U. S. 486, 490 (1947). The Supreme Court, per Reed, J., said:

> "For the purpose of taxation of those residents within her borders, Rhode Island has sovereign power unembarrassed by any restriction except those that emerge from the Constitution. Whether that power is exercised wisely or unwisely is the problem of each state. It may well be that sound fiscal policy would be promoted by a tax upon trust intangibles levied only by the state that is the seat of a testamentary trust. Or, it may be that the actual domicile of the trustee should be preferred for a single tax. Utilization by the states of modern reciprocal statutory tax provisions may more fairly distribute tax benefits and burdens, although the danger of competitive inducements for obtaining a settlor's favor are obvious. But our question here is whether or not a provision of the Constitution forbids this tax. Neither the expediency of the levy nor its economic effect on the economy of the taxing state is for our consideration. We are dealing with the totality of a state's authority in the exercise of its revenue raising powers."

Cf. Stone, J., dissenting, in First Nat. Bank of Boston v. Maine, 284 U. S. 312, 334 (1931), overruled by Utah v. Aldrich, *supra* note 23:

tangibles for estate tax purposes[25] but it does not extend to ordinary intangible personal property taxes. Twelve states have constitutionally or legislatively deprived themselves of the right to levy an intangible personal property tax, and in four other states all but a few intangibles have been exempted.[26] Income tax legislation reaching the income from the intangibles has in most instances replaced the intangible personal property tax.[27]

I. Jurisdiction in Trust Cases

All the trust cases hereinafter discussed involve foreign trusts, and all name Florida residents as beneficiaries, but the settlor was not in each instance a Florida resident. The Florida prohibition of an income tax[28] comes into play when the beneficiary is limited to the mere right to income.

Trustees domiciled in Florida must report intangibles they control for taxation,[29] and resident beneficiaries need not report their beneficial interest in intangibles reported by Florida trustees.[30] Since the Florida trustee is liable for the tax on intangibles he controls,[31] the domicile or proprietary extent of the beneficiary's interest is immaterial.[32] Resident

"Even if it be assumed that some protection from multiple taxation, which the Constitution has failed to provide, is desirable, and that this Court is free to supply it, that result would seem more likely to be attained, without injustice to the states, by familiar types of reciprocal state legislation, than by stretching the due process clause to cover this case. See 28 Columbia L. Rev. 806; 43 Harvard L. Rev. 641."

[25]Fla. Stat. §198.44 (1941).

[26]Roesken, *Trends in the Ad Valorem Taxation of Intangibles*, 26 Taxes 639 (1948). Jurisdictions exempting in toto are Arizona, Colorado, Delaware, District of Columbia, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Utah, Vermont, Washington and Wisconsin. Only a few intangibles are reached in Louisiana, Maryland, Minnesota and Nevada.

[27]Roesken, *supra* note 26.

[28]Fla. Const. Art. IX, §11.

[29]Fla. Stat. §199.07 (Cum. Supp. 1947).

[30]Fla. Stat. §199.07 (Cum. Supp. 1947), read in conjunction with Fla. Stat. §199.02(2) (Cum. Supp. 1947), relieves the beneficial interest in a trust from taxation by Florida when the trustee is a resident of Florida and returns the corpus of the trust for taxation.

[31]Fla. Stat. §199.07 (Cum. Supp. 1947).

[32]State v. Beardsley, 77 Fla. 803, 82 So. 794 (1919), stated that a trustee was the owner of intangibles and taxable at his domicile, but the tax was refused because the county lacked jurisdiction of either the trustee or beneficiary. A recent case sustaining such taxation is Greenough v. Tax Assessors of Newport, 331 U. S. 486 (1947), involv-

beneficiaries of foreign trusts may choose between reporting their beneficial interests themselves or having the foreign trustee report the beneficial interest for them and pay the tax to the Florida collector.[33] The former alternative is preferable for a resident beneficiary whose interest in the foreign trust is limited to the mere right to income, because the court looks to the interest of the resident beneficiary, which may run the gamut from a mere right to receive the income[34] to the verge of absolute control;[35] and if his interest amounts only to a right to income, the state does not tax. The test of whether the tax amounts to an income tax and is therefore unconstitutional has not been limited to trust situations.[36]

In *Wood v. Ford*[37] the Florida beneficiary of a foreign trust created by a non-resident settlor had the right to income for life, with power to appoint the principal in his will; the trust was irrevocable, and the beneficiary on becoming an adult could alienate the income. The Court characterized this interest as one subject to the tax and held the tax payable even though the trustee could be taxed at his domicile, emphasizing the fact that the interest of the beneficiary in the trust was distinct from the rights of the trustee. In *Owens v. Fosdick*[38] a foreign trust created by a non-resident settlor named a Florida resident as beneficiary, with the right to income only and no right to assign. After comparing the rights of the beneficiary in the *Owens* case with the rights of the beneficiary in the *Wood* case, the Court concluded that in the *Owens* case there was nothing more than an estate in income and that to tax it would violate the spirit and intent of the constitutional provision prohibiting an income

---

ing a New York trust composed of intangibles, one of the two trustees residing in Rhode Island. The Supreme Court affirmed in a five to four decision the right of the city in which the one trustee was domiciled to levy a property tax on one half the value of the trust. Jurisdictional basis for the tax was the fact that Rhode Island courts were available for enforcement of the trust if requested. The dissent pointed out that, admitting jurisdiction, it was only a matter of grace that the entire corpus was not taxed.

[33]FLA. STAT. §199.02(2) (Cum. Supp. 1947).

[34]Mahan v. Lummus, 35 So.2d 725 (Fla. 1948); Owens v. Fosdick, 153 Fla. 17, 13 So.2d 700 (1943).

[35]Burrows v. Hagerman, 159 Fla. 826, 33 So.2d 34 (1947).

[36]McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939) (license tax on the professions measured by gross receipts held unconstitutional); Kurz v. Lee, 121 Fla. 360, 163 So. 859 (1935) (statutory scheme impairing income of state college teacher declared unconstitutional).

[37]148 Fla. 66, 3 So.2d 490 (1941).

[38]153 Fla. 17, 13 So.2d 700 (1943).

tax. The Court declined to follow a Kentucky case[39] on all fours in which the state had imposed the tax, because the Kentucky Constitution contained no similar prohibition against an income tax.

Mahan v. Lummus[40] presented a Florida resident who created a foreign trust and named herself as beneficiary, reserving the right to the income for life with remainder over. The trust deed provided that upon the happening of certain conditions precedent she would be entitled to amounts of the principal, presumably all if necessary. It was in the trustee's discretion to determine whether these conditions had occurred before releasing any of the corpus to the life beneficiary. The Court held that, since she had only the right to the income and since definite conditions precedent must be met in order to obtain any of the corpus, a tax on the intangibles would amount to an income tax. This presents the problem of the location of the current proprietary interest. Here the Court evidently found that it was with the foreign trustee as legal owner, and that the settlor-beneficiary[41] had no proprietary interest in either of those capacities.

In these cases involving foreign trusts, Florida, in order to tax, must have jurisdiction of a person who has a present vested beneficial interest in the trust that amounts to more than the mere right to income. *Mahan v. Lummus*[42] reaches the unfortunate result that a resident settlor-beneficiary of a foreign trust may escape the intangible personal property tax, although the right to principal, upon certain events, is retained along with the right to the income.

II. Florida Branches Maintained by Foreign Concerns

In the field of intangible tax law the term "business situs" signifies a factual situation indicating justification for a state's conclusion that it has jurisdiction to levy an intangible personal property tax.[43] In addition to the intangibles held in the normal course of branch activities in Florida, a foreign concern may own and keep in another state intangibles regarded as partaking in its business activities in Florida, on the ground that they form

[39]Commonwealth *ex rel.* Martin v. Sutcliffe, 283 Ky. 274, 140 S. W.2d 1028 (1940).

[40]Mahan v. Lummus, 35 So.2d 725 (Fla. 1948).

[41]The tax assessor argued that under a settlor-beneficiary trust the beneficiary should be considered the owner of the trust corpus as well as the owner of the income.

[42]35 So.2d 725 (Fla. 1948).

[43]Wheeling Steel Corp. v. Fox, 298 U. S. 193 (1936); New Orleans v. Stempel, 175

the financial backbone of the concern regardless of the physical location of the instruments. In the cases involving taxation of intangibles some are, in the normal instance, admittedly taxable in Florida; but litigation arises over others claimed to have their actual "business situs" in a foreign state. The contention is that, since they have no "business situs" in Florida, it is without jurisdiction to tax. The question of whether a "business situs" has been acquired, however, is colored by the practical consideration as to whether the state extends sufficient benefit to the intangibles to tax them.

Non-resident shareholders of national banks located in Florida are liable for the tax, on the theory that the bank as their agent is present in Florida.[44]

In *Genessee Corp. v. Owens*[45] a Delaware corporation authorized to do business in Florida held instruments secured by liens on property located outside the State of Florida. There was no allegation that appellant's "business situs" or principal place of business was outside Florida, or that the property was taxed or taxable in any other state; accordingly the Court felt justified in assuming that the situs of the property for taxation purposes was in Florida. In *Smith v. Lummus*[46] the problem was whether accounts receivable, allegedly with their "business situs" at the New York home office of a brokerage firm, actually had a "business situs" at its branch office in Florida. The Court said:[47]

> "We are unable to find the testimony in the record to support this allegation. The customer resides in Florida; the original payment was made by him in Florida at the branch office; interest and broker commissions are paid in Florida; Florida law protects the branch office and business transactions had therein; Florida courts provide forums for adjudication of differences arising out of the transaction, and for these several reasons it cannot be said that the 'debit balances' originated in New York, as alleged, to the exclusion of the State of Florida."

The decisions is sound and indicates that a "business situs" cannot be

---

U. S. 309 (1899); Powell, *The Business Situs of Credits*, 28 W. VA. L. Q. 89 (1922).

[44]Atlantic Nat. Bank v. Simpson, 136 Fla. 809, 188 So. 636 (1938).

[45]155 Fla. 601, 20 So.2d 654 (1945).

[46]153 Fla. 415, 14 So. 2d 897 (1943).

[47]*Id.* at 420, 14 So. 2d at 899.

disguised by maintaining separate bank accounts and limiting the branch to routine matters, with all policy decisions handled at the home office. The question was, of course, vital for the firm; had the "business situs" been established in New York there would have been no tax on the intangibles involved.[48]

In *Gay v. Bessemer Properties, Inc.*[49] the question was whether intangibles, constituting the financial backbone of a Delaware corporation and located in a Delaware vault, had acquired a "business situs" in Florida. The complainant, formed by a consolidation of four Delaware and five Florida corporations, maintained a home office in New York, where all policy decisions originated, and two offices in Florida, where Main Account and Payroll Account deposits were established. The Main Account was subject to New York withdrawals only, and the major investment of the corporation was admittedly in Florida real estate. On demand from the comptroller the assessor put these securities on the 1944 tax roll for back taxes for 1941-1943. In the view of the master, the issue was not whether these intangibles could be or in fact were taxed elsewhere,[50] but whether they were taxable in Florida. His report, which was quoted with approval on appeal, high-lighted the lack of authority of the branch offices in Florida and the fact that other taxes had been paid on property with a situs unquestionably in Florida; accordingly he concluded that the intangibles in question were not taxable in Florida.

A comparison of the activities and the amount of benefit extended to the intangibles involved in the *Gay* and *Smith* cases makes reconciliation difficult. The fact that the intangibles in the former case were in Delaware, with no showing of any definite connection between them and the actual investment, perhaps justifies the decision. The choice between the two decisions is basically one of policy. The *Smith* case[51] is preferable from a revenue-raising standpoint, but the *Gay* case[52] is more in line with the general Florida policy of attracting business to the state. Normally such a determination should be made by our Legislature, so as to avoid uncertainty on the part of the judiciary.

---

[48]Roesken, *Trends in the Ad Valorem Taxation of Intangibles,* 26 TAXES 639 (1948).

[49]Gay v. Bessemer Properties, Inc., 159 Fla. 729, 32 So.2d 587 (1947).

[50]Roesken, *supra* note 48. As it happens, neither Delaware nor New York would tax these intangibles.

[51]153 Fla. 415, 14 So.2d 897 (1943).

[52]159 Fla. 729, 32 So. 2d 587 (1947).

III. Non-resident Creditors Secured by Florida Realty

The secured intangibles in this classification pay once, upon recordation of the security instrument. They are not subject to an annual levy, whatever the life of the intangible involved.[53] Further, though the statute is broad,[54] the Court limits the amount of the indebtedness subject to tax to the amount of the credit which has a "domiciliary" or "business" situs in Florida. In *State v. Gay*[55] a new foreign corporation resulting from a reorganization proceeding took over the property of the old corporation and in exchange gave creditors of the latter bonds secured by mortgages on the new corporation's property in six states, Florida included. The State argued that the tax should be levied on the proportionate share of the bonds secured by Florida realty, regardless of the domicile of the owners or of any possible foreign business situs of the bonds, or alternatively, that the statute should be construed as imposing an excise tax for the privilege of recording the mortgage. The Court pointed out that the statute imposed a property rather than an excise tax and then continued:[56]

> "An essential and indispensable feature of the power of taxation is that either the owner of personal property be a resident, or that the property be situated within the district attempting to exercise the power to tax. . . . The fact that the indebtedness may be secured by a mortgage on real property situated in a State other than the domicile or business situs of the owner of the debt will not give the indebtedness a tax situs in the state where the real property is located."

Although painful from a revenue-producing standpoint the decision is not without justification, since the owners of 99 per cent of the indebtedness were residents of other states, the debtor corporation was not domiciled in Florida, and but a single transaction was involved. One transac-

---

[53]Fla. Stat. §199.11(3) (Cum. Supp. 1947): "The tax imposed by this subsection shall be the only intangible tax levied on such notes, bonds and other obligations under this chapter."

[54]Fla. Stat. §199.11(3) (Cum. Supp. 1947): ". . . taxable value shall be the principal amount of the indebtedness . . . ."

[55]State *ex rel.* Seaboard A. L. Ry. v. Gay, 35 So.2d 403 (Fla. 1948).

[56]*Id.* at 410.

tion does not create a "business situs."[57] The fact that resort to Florida courts would be necessary in order to enforce the debt in event of default would justify an opposite holding[58] if the statute[59] had been carefully drafted so as to express a distinct meaning. On the one hand, it shows an intention not to reach beyond the Florida realty mortgaged, thus indicating by implication that it should reach this far in any event, and that the mortgaged realty in Florida is the significant factor. On the other hand, the statute begins by designating, as the incidence of the tax, the obligation itself rather than the mortgage securing it. This factor was obviously the one that most impressed the Court. The corporation paid the tax on the amount of debt owned by Florida residents, and they will not have to report these bonds again, regardless of the life of the bonds.[60]

IV. Conclusion

There is no solid ground upon which to criticize the Court's application of the intangible personal property tax law. It has carried into each case the Florida policy on taxation and has made a sincere effort to arrive at fair and equitable results. Nevertheless, as the cost of playing tax-haven becomes more apparent to the general citizenry, the policy may be expected to change.

Dropping the intangible personal property tax and effecting the constitutional repeal[61] necessary to permit the levy of an income tax would eliminate the major problems encountered in the trust cases, since the test would then be: Does Florida have jurisdiction of the individual receiving the income from the trust?[62] A net income tax substituted for the intangible personal property tax would also remove the problem in the "business situs" cases; in such event the only question would be: Was the money earned for a foreign holder via Florida transactions?[63] Substitu-

[57]New Orleans v. Stempel, 175 U. S. 309 (1899).

[58]Greenough v. Tax Assessors of Newport, 331 U. S. 486 (1947).

[59]Fla. Stat. §199.02(3) (Cum. Supp. 1947), quoted in note 14 *supra; cf.* State *ex rel.* Tampa Electric Co. v. Gay, 40 So.2d 225 (Fla. 1949), in which the court again had difficulty with the ambiguous statute.

[60]Fla. Stat. §199.11(3) (Cum. Supp. 1947), quoted in note 53 *supra.*

[61]The constitutional prohibition against an income tax found in Fla. Const. Art. IX, §11, would have to be removed.

[62]Guaranty Trust Co. v. Virginia, 305 U. S. 19 (1938) (even though the foreign trustee may pay a tax on the same income at his domicile).

[63]Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113 (1920) (approving plan of apportionment to determine amount of income derived from activities in the