



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-8486

SBT: FILM RENTS & ROYALTIES

**House Bill 4211 (Substitute H-2)
First Analysis (4-27-93) Floor Copy**

**Sponsor: Rep. Willis Bullard, Jr.
Committee: Taxation**

THE APPARENT PROBLEM:

Representatives of movie theater owners and broadcasters complain that a 1990 state appeals court ruling on the single business tax treats them unfairly. The decision, as explained to the House Taxation Committee, said that the rents theaters pay to film distributors and payments by broadcasters for films and other programming should be treated as royalties (which apparently had been the treasury department's view in the case). Unlike rents, royalties deducted in arriving at federal taxable income are added back into the tax base for purposes of determining SBT liability, unless they are specifically exempted. The decision had the effect, therefore, of significantly increasing the tax liability of theater operators and broadcasters, since acquiring films and programming are major costs of doing business for these enterprises. The SBT act exempts a number of royalties from the tax, including certain oil and gas royalties, cable television franchise fees, and other franchise fees. If film rents and programming fees are to be considered royalties, they should at least get equal tax treatment with those exemptions, say theater owners and broadcasters. They are asking that they be able to return to the tax treatment they experienced under the SBT for the 15 years prior to the 1990 decision (known as Field Enterprises v the Michigan Department of Treasury).

THE CONTENT OF THE BILL:

The bill would amend the Single Business Tax Act to exclude from the tax base:

- a) film rental payments made by a theater owner to a film distributor; and
- b) royalties, fees, charges, or other payments or consideration paid or incurred by radio or television

broadcasters for program matter or signals that they broadcast.

Under the act, royalties paid are added to a company's tax base unless specifically excluded. Royalties received, to the extent included in arriving at federal taxable income, are usually deducted from a company's tax base. That is, royalties are included in the tax base of those who pay them not those who receive them. However, if royalties are excluded from the tax base of those paying the royalties, they cannot be deducted from the tax base of those receiving them. The bill would specify that the kinds of payments listed above would not be added to the tax base of those making them and could not be deducted from the tax base of those receiving them.

MCL 208.9

FISCAL IMPLICATIONS:

As explained to the House Taxation Committee by industry representatives and the Department of Treasury, there would be no loss of revenue to the state from the bill. This is because, reportedly, the treasury department has not been collecting taxes theater owners and broadcasters should pay under the 1990 ruling. It should be noted that distributors will be liable for additional tax under this bill, but it is not clear whether there are such distributors located in Michigan to pay the tax. Testimony before the House Taxation Committee revealed that prior to the court decision, those making the payments in question considered them rent payments, which are excluded from the tax base of those paying them, while distributors considered the payment they received to be royalties, which are exempt from the tax base of those receiving them. This means these costs were not included in anyone's tax base under the SBT act. (4-21-93)

House Bill 4211 (4-27-93)

ARGUMENTS:***For:***

Theater owners and broadcasters say it is unfair to treat film rentals and programming purchases as royalties for purposes of the SBT Act, thus significantly increasing their tax burdens. These costs had not been part of their tax bases for the 15 years prior to a 1990 court ruling. The companies had considered them rents, which are not subject to the SBT tax. By exempting these payments from the SBT act, the bill provides the same treatment to theater owners and broadcasters that some other businesses receive, such as oil and gas producers, franchisees, and cable television companies.

Against:

It should be noted that this bill would overrule a state appeals court decision that favored the treasury department's interpretation of how certain business costs should be treated under the SBT act. Why this change of policy?

POSITIONS:

The Department of Treasury supports the bill. (4-21-93)

The Michigan Association of Broadcasters supports the bill. (4-21-93)

The Theater Operators Association supports the bill. (4-21-93)