



HOUSE BILL No. 5114

October 12, 1993, Introduced by Reps. Bullard, Bender, Bandstra, Munsell and Dalman and referred to the Committee on Taxation.

A bill to amend sections 1 and 6 of Act No. 301 of the Public Acts of 1939, entitled as amended

"An act to provide for the imposition and the collection of a specific tax upon the privilege of ownership of intangible personal property and on certain enterprises having possession of intangible personal property of another; to define owners of intangible personal property; to provide for the disposition of the proceeds thereof; to prescribe the powers and duties of the department of revenue with respect thereto; to prescribe penalties; to make an appropriation to carry out the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

being sections 205.131 and 205.136 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1 and 6 of Act No. 301 of the Public
2 Acts of 1939, being sections 205.131 and 205.136 of the Michigan
3 Compiled Laws, are amended to read as follows:

1 Sec. 1. When used in this act:

2 (a) "Person" means an individual, firm, copartnership, joint
3 adventure, LIMITED LIABILITY COMPANY, association, corporation,
4 company, estate, or any other group or combination acting as a
5 unit, and the plural as well as the singular number, unless the
6 intention to give a more limited meaning is disclosed by the
7 context. Person does not include public corporations.

8 (b) "Intangible personal property" means ~~moneys~~ FUNDS on
9 hand, ~~or~~ on deposit, or in transit, shares of stock, and other
10 units of interest, in corporations, joint stock companies, and
11 other associations conducted for profit, not ~~, however,~~ includ-
12 ing the interest of a partner under a partnership agreement OR
13 THE INTEREST OF A MEMBER OF A LIMITED LIABILITY COMPANY UNDER THE
14 OPERATING AGREEMENT OR ARTICLES OF ORGANIZATION OF THE LIMITED
15 LIABILITY COMPANY; securities ~~which~~ THAT constitute a part of
16 an issue of similar securities, such as bonds, certificates of
17 indebtedness, debentures, notes, and certificates of deposit
18 therefor; annuities; accounts and notes receivable, land con-
19 tracts receivable, real estate and chattel mortgages receivable,
20 conditional sale contracts receivable, and other obligations for
21 the payment of money; AN equitable interest in any of the forego-
22 ing classes of intangible personal property, including THE inter-
23 est of beneficiaries under A trust whether created inter vivos or
24 by will; and any ~~and all~~ other credits and evidences of indebt-
25 edness whether secured or unsecured.

26 (c) "Annuities" ~~includes,~~ MEANS A CONTRACT THE FACE VALUE
27 OF WHICH IS ITS CASH RESERVE VALUE AS CARRIED ON THE BOOKS OF THE

1 OBLIGOR EXCEPT THAT THE TAXPAYER, AFTER ONCE ESTABLISHING THE
 2 CASH RESERVE VALUE, MAY BE ENTITLED TO COMPUTE THAT VALUE ANNU-
 3 ALLY UPON THE ASSUMPTION THAT OF THE AMOUNTS RECEIVED ALL EXCESS
 4 OVER THE APPLICABLE INTEREST RATE GUARANTEED WAS RETURN OF PRIN-
 5 CIPAL, DEDUCTIBLE FROM THE FACE VALUE; AND IF THE INTEREST RATE
 6 IS NOT GUARANTEED, THEN THE COMPUTATION SHALL BE BASED ON INTER-
 7 EST OF 3% PER ANNUM. ANNUITIES INCLUDES BOTH OF THE FOLLOWING:

8 (i) ~~(1)~~ Contracts for the periodic payment of sums of
 9 money the consideration for which is the payment of money either
 10 in a lump sum or in installments by the recipient or ~~another~~
 11 ~~when,~~ OTHER PERSON IF the periodic payments extend over a fixed
 12 period ~~in excess~~ of MORE THAN 1 year ~~or~~ or the periodic pay-
 13 ments extend during the lifetime of the recipient or ~~another~~
 14 OTHER PERSON.

15 (ii) ~~(2)~~ Contracts for CONSIDERATION similar
 16 ~~consideration~~ TO THE CONSIDERATION DESCRIBED IN
 17 SUBPARAGRAPH (i) whether designated insurance or otherwise
 18 ~~containing the~~ THAT CONTAIN A provision for the conversion of
 19 the payments to be received into periodic payments for a fixed
 20 period or for the life of the recipient or ~~another~~ OTHER
 21 PERSON. ~~Such a~~ A contract ~~shall not be deemed~~ DESCRIBED IN
 22 THIS SUBPARAGRAPH IS NOT CONSIDERED an annuity until THE CONTRACT
 23 IS actually converted. ~~The face value of an annuity shall be~~
 24 ~~its cash reserve value as carried on the books of the obligor.~~
 25 ~~However the taxpayer, after once establishing the cash reserve~~
 26 ~~value as above stated, may thereafter be entitled to compute that~~
 27 ~~value annually, upon the assumption that of amounts received, all~~

~~1 excess over the applicable interest rate guaranteed was return of~~
~~2 principal, deductible from the face value, and if the interest~~
~~3 rate is not guaranteed, then computation shall be based on an~~
~~4 interest assumption of 3% per annum.~~

5 (D) "Annuities" ~~shall~~ DOES not include annuity contracts
 6 pending the payment of benefits to the annuitants, ~~nor shall it~~
 7 ~~include so called "annuities" which~~ OR CONTRACTS THAT ARE CALLED
 8 ANNUITIES BUT are in fact deferred compensation for services
 9 rendered AND ARE payable under old age retirement or pension pro-
 10 visions of a public authority or private employer.

11 (E) ~~(c) The "situs"~~ "SITUS" MEANS, FOR INTANGIBLE PERSONAL
 12 PROPERTY, THE DOMICILE OF THE OWNER of THE intangible personal
 13 property ~~for the purpose of~~ SUBJECT TO taxation under this act
 14 ~~shall be the domicile of the owner thereof, except that any~~
 15 ~~intangible~~ IN THE FOLLOWING CIRCUMSTANCES:

16 (i) INTANGIBLE personal property ~~—~~ not otherwise exempt
 17 under the laws of this state ~~—~~ owned by a person having his OR
 18 HER domicile outside of this state ~~—~~ AND placed in the hands of
 19 a manager or agent in this state to the extent that the intangi-
 20 ble personal property is invested in a course of repeated trans-
 21 actions in obligations of persons residing in this state or
 22 secured by property located in this state, ~~shall be deemed~~ IS
 23 CONSIDERED to have a situs where the manager or agent resides
 24 within this state. ~~— and except that intangible~~

25 (ii) INTANGIBLE personal property owned by a person domi-
 26 ciled in this state ~~—~~ AND placed in the hands of a manager or
 27 agent outside of this state to the extent that the property is

1 invested in a course of repeated transactions in obligations of
 2 persons residing outside of this state or secured by property
 3 located outside of this state, ~~shall be deemed~~ IS CONSIDERED
 4 not to have a situs in this state.

5 (F) ~~(d)~~ "Income" MEANS THE BASE UPON WHICH THE TAX UNDER
 6 THIS ACT IS MEASURED AND includes ALL OF THE FOLLOWING: ~~(+)~~
 7 ~~interest~~

8 (i) INTEREST received upon intangible personal property. →
 9 ~~(2) dividends~~

10 (ii) DIVIDENDS and other distributions, whether in the form
 11 of cash or property, to the extent that ~~they~~ THE DISTRIBUTIONS
 12 represent the yield of intangible personal property BUT DOES not
 13 ~~including, however,~~ INCLUDE a distribution of stock by reason
 14 of an order of divestment under the antitrust laws which is con-
 15 sidered a return of capital in section 1111 of the United States
 16 internal revenue code as enacted in Public Law 87-403 of the
 17 eighty-seventh congress of the United States. ~~and (3) all~~

18 (iii) ALL other earnings or yield of intangible personal
 19 property regardless of the name by which THE EARNINGS OR YIELD IS
 20 designated. ~~For the purpose of computing the tax imposed under~~
 21 ~~this act, the gross income, including taxes~~

22 (iv) TAXES, charges, and other deductions ~~which may be made~~
 23 ~~therefrom, shall be the basis upon which the tax shall be~~
 24 ~~measured~~ FROM INCOME.

25 (G) ~~(e)~~ "Tax year" or "taxable year" means the calendar
 26 year, or the taxpayer's fiscal year ~~when permission is obtained~~

1 ~~by~~ IF the taxpayer OBTAINS PERMISSION from the department to use
 2 a fiscal year as the tax period in lieu of the calendar year.

3 (H) ~~(f)~~ "Commission" or "department" means the revenue
 4 division of the department of treasury.

5 (I) ~~(g)~~ "Taxpayer" means a person liable for ~~any~~ tax
 6 ~~hereunder~~ UNDER THIS ACT.

7 (J) ~~(h)~~ "Tax" means all taxes, interest, or penalties
 8 levied under this act.

9 (K) ~~(i)~~ "Owner" means ~~a person who~~ ALL OF THE
 10 FOLLOWING: ~~(1)~~

11 (i) A PERSON THAT has both the entire legal and equitable
 12 interest in THE intangible personal property or both a legal and
 13 equitable estate ~~therein which~~ IN THE INTANGIBLE PERSONAL PROP-
 14 ERTY THAT entitles him OR HER to the present enjoyment ~~thereof;~~
 15 ~~(2)~~ OF THE PROPERTY.

16 (ii) A PERSON THAT holds intangible personal property as an
 17 administrator, executor, receiver, trustee in bankruptcy, or
 18 assignee for the benefit of creditors. ~~;(3) is~~

19 (iii) A PERSON engaged in the business of receiving ~~moneys~~
 20 MONEY for deposit or savings subject to check or other
 21 withdrawal. ~~;(4) is the~~

22 (iv) THE beneficiary of an inter vivos or testamentary
 23 trust, but only to the extent that the trust embraces intangible
 24 personal property. ~~Where~~ IF there is more than 1 beneficiary,
 25 THE OWNER IS the person ~~who~~ THAT is entitled to the present
 26 enjoyment of the trust property. ~~shall be deemed to be the~~
 27 "owner". ~~Where~~ IF more than 1 beneficiary is entitled to the

1 present enjoyment of the trust property, all beneficiaries so
 2 entitled ~~shall be deemed to be the "owners"~~ ARE CONSIDERED THE
 3 OWNERS according to their respective interests. ~~Where~~ IF there
 4 is more than 1 beneficiary ~~,~~ only some of which are entitled to
 5 the present enjoyment of the trust property, those beneficiaries
 6 who are so entitled ~~shall be deemed to be~~ ARE CONSIDERED the
 7 ~~"~~ owners. ~~"~~. ~~Where~~ IF a trustee of a trust ~~, as hereinbe-~~
 8 ~~fore mentioned,~~ must, or in his OR HER discretion may, accumu-
 9 late the income ~~thereof~~ OF THE TRUST, the trustee ~~shall be~~
 10 ~~deemed to be~~ IS CONSIDERED the ~~"~~ owner ~~"~~ to the extent that
 11 the income is ~~so~~ accumulated. A beneficiary domiciled in this
 12 state shall be taxable irrespective of the state or other juris-
 13 diction of the creation or administration of the trust.

14 (l) ~~(j)~~ "Face value" means the amount ~~appearing~~ THAT
 15 APPEARS on the face of ~~the~~ AN instrument or other written
 16 record ~~evidencing~~ THAT EVIDENCES the intangible personal prop-
 17 erty, or ~~in case~~ IF there is no instrument or other written
 18 record, then the amount ~~shall be~~ determined by other evidence
 19 satisfactory to the commission, reduced by payments, if any,
 20 ~~which~~ THAT have been made.

21 Sec. 6. (1) ~~All remittances~~ REMITTANCES of taxes, inter-
 22 est, and penalties imposed by this act shall be made to the
 23 department of treasury by bank draft, check, cashier's check,
 24 money order, certificate of deposit, or money. ~~Any person~~
 25 ~~having~~ IF intangible personal property ~~of another in his~~
 26 ~~custody~~ upon which a tax is imposed under this act ~~,~~ IS IN THE
 27 CUSTODY OF A PERSON OTHER THAN THE OWNER WHEN THE TAX IS DUE AND

1 PAYABLE, THAT PERSON shall, pursuant to rules adopted by the
 2 department, collect and pay the tax imposed ~~thereon and~~
 3 ~~payments~~ ON THE PROPERTY. PAYMENTS so made shall be credited to
 4 the owner. ~~If at the time the tax is due and payable the tax~~
 5 ~~payer has no property in the control of or to his credit with~~
 6 ~~such person, the latter shall be under no obligation to collect~~
 7 ~~and pay the tax.~~ When the tax is paid, the amount ~~thereof~~ OF
 8 THE TAX may be charged against the property of the owner ~~—~~ and
 9 the person paying the ~~same~~ TAX shall have a lien ~~thereon~~ ON
 10 THE PROPERTY for the amount ~~so~~ OF TAX paid. Any person having
 11 intangible personal property of any other PERSON in his OR HER
 12 control may ~~—, if he so elects,~~ assume and pay the tax imposed
 13 upon the owner.

14 (2) If ~~in any case it shall be made to appear~~ IT APPEARS
 15 to the department of treasury that the amount paid ~~in accordance~~
 16 ~~with this provision~~ UNDER THIS SECTION is in excess of the
 17 amount ~~which~~ THAT should have been paid under sections 2 and 3,
 18 A refund shall be made. A remittance other than cash ~~shall~~ IS
 19 not ~~be~~ a final discharge of liability for the tax ~~herein~~
 20 imposed and levied ~~unless and~~ UNDER THIS ACT until the remit-
 21 tance has been paid in cash. The department of treasury shall
 22 ~~forthwith~~ PROMPTLY deposit all ~~moneys~~ FUNDS received in the
 23 state treasury ~~— A portion of the intangibles tax revenue shall~~
 24 ~~be distributed among the several villages, townships, and cities,~~
 25 ~~according to the provisions of Act No. 140 of the Public Acts of~~
 26 ~~1971, as amended, being sections 141.901 to 141.919 of the~~
 27 ~~Michigan Compiled Laws, and all other moneys so received in any~~

1 ~~state fiscal year shall~~ TO be credited to the general fund of
2 the state.

3 Section 2. This amendatory act shall not take effect unless
4 Senate Bill No. _____ or House Bill No. 5113 (request
5 no. 05074'93) of the 87th Legislature is enacted into law.