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BILL ANALYSIS

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Senate Bill 880 (as enrolled)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 4-29-96

RATIONALE

For several years now there has been some dispute over the inclusion of film royalty payments in the tax base of single business tax (SBT) payers. From the inception of the SBT to 1990, payments made by theaters to film distributors and payments by television broadcasters for films and other programming were considered to be rental payments (which are not included in a taxpayer's SBT base), and therefore were not taxed. On the other hand, under the SBT Act at that time, the tax on royalties had to be paid by the firm that made the payments, rather than the party who received them. In 1990 the operator of a television station alleged that the Department of Treasury had improperly considered as royalty, rather than as rent, payments the station had made to a distributor for programming. This meant, then, that the operator's tax base was expanded. The matter went to court, and the Michigan Court of Appeals in *Field Enterprises* v *Department of Treasury* (184 Mich App 151 (1990)) ruled that the payments made by the operator were royalties, and should be included in the taxpayer's tax base. It was argued by theater owners and broadcasters that the decision imposed a sudden, unfair tax burden upon their businesses that previously had not existed, and in 1993 the Legislature passed Public Act 105 to correct the problem.

Public Act 105 amended the SBT Act to provide that royalties paid by television broadcasters, and film rental payments made by a theater to a film distributor, do not have to be included in the broadcaster's or theater's tax base; and to provide that such royalties received by a film distributor must be included in the distributor's tax base. While this apparently has solved the problem for the broadcasters and theaters, by returning their tax treatment to the way it was prior to the 1990 decision, it has changed the tax considerations for the film distributors. Prior to the passage of Public Act 105, a film distributor had to include in its tax base royalties it paid and could deduct royalties it received; however, Public Act 105 specified that while royalties the distributor pays must be added to its tax base, royalties it receives from theater owners cannot be deducted from its tax base. It has been suggested that a film distributor should be allowed to exclude from its tax base certain royalty payments to a film producer, in the same manner that theater owners are allowed to exclude payments to film distributors.

CONTENT

The bill would amend the Single Business Tax Act to allow a film distributor to exclude from its tax base certain royalty payments, fees, and charges paid to a film producer; and prohibit a film producer, or film distributor and producer, from deducting from its tax base certain payments, fees, and charges received.

Currently, under the Act, a firm must add to its tax base royalties it paid, to the extent deducted in arriving at Federal taxable income, except those royalties specifically excluded. A firm may deduct from its tax base royalties it received, to the extent included in arriving at Federal taxable income, except those royalties specified. The Act excludes from a theater owner's tax base film rental payments made by a theater owner to a film distributor. The bill would exclude from a theater owner's tax base, in addition, film rental or royalty payments made to a film producer, or film distributor and producer; and would exclude from a film distributor's tax base royalties, fees, and charges, or other payments or consideration, paid for copyrighted motion picture films, program matter, or signals, to a film producer. A film producer that received these payments could not deduct them from its tax base.

The bill provides that it would be retroactive and effective on July 15, 1993.

MCL 208.9

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

For many years prior to 1990 payments by theater owners and television broadcasters for films and program matters were considered as rent, and therefore did not have to be included in a theater owner's or broadcaster's tax base. A 1990 Court of Appeals decision changed this situation, however, by finding that such payments were royalty payments rather than rental payments, and as such were subject to the SBT Act's treatment for royalties. This meant that theater owners and broadcasters found that what for many years had been excluded from their tax bases (payments made for films and programs), now had to be included. In response to this tax change, the State enacted Public Act 105 of 1993, which specifically excludes from the tax base royalty payments made by television broadcasters for program matters, and royalty payments made by a theater owner to a film distributor; at the same time, the Act provides that royalties received by a film distributor from a theater owner may not be deducted. Thus, in solving the problem of the theater owners, the Act caused a change in the tax treatment of film distributors, who until that time had been able to deduct any royalties they received to the extent included in Federal taxable income. By allowing a distributor to exclude from its tax base royalties paid by the distributor to a film producer, the bill would treat film distributors in the same manner that theater owners are treated, and generally tax the distributors in the same manner that they were taxed before 1990.

Legislative Analyst: G. Towne

FISCAL IMPACT

It is estimated that this bill would result in a very minimal revenue loss to the State. A dollar estimate of the revenue loss is not possible at this time because it is not known how many film distributors and producers have nexus in Michigan.

Fiscal Analyst: J. Wortley