

SENATE BILL No. 394

May 2, 1989, Introduced by Senators N. SMITH, GAST, NICHOLS, DI NELLO, POSTHUMUS, EHLERS, CARL, SCHWARZ, FREDRICKS, WELBORN, CROUSEY, CRUCE, SHINKLE, GEAKE, ARTHURHULTZ, ENGLER and BINSFELD and referred to the Committee on Finance.

A bill to amend sections 1, 2, and 3 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, 205.132, and 205.133 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Sections 1, 2, and 3 of Act No. 301 of the
- 2 Public Acts of 1939, being sections 205.131, 205.132, and 205.133
- 3 of the Michigan Compiled Laws, are amended to read as follows:

1 Sec. 1. ~~When~~ AS used in this act:

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

8 (b) "Intangible personal property" means ~~moneys~~ MONEY 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,~~
12 including, HOWEVER, the interest of a partner under a partnership
13 agreement; securities ~~which~~ THAT constitute a part of an issue
14 of similar securities, such as bonds, certificates of indebted-
15 ness, debentures, notes, and certificates of deposit; ~~therefor,~~
16 annuities; accounts and notes receivable, land contracts receiv-
17 able, real estate and chattel mortgages receivable, conditional
18 sale contracts receivable, and other obligations for the payment
19 of money; equitable interest in any of the foregoing classes of
20 intangible personal property, including interest of beneficiaries
21 under trust whether created inter vivos or by will; and any and
22 all other credits and evidences of indebtedness whether secured
23 or unsecured.

24 (c) "Annuities" includes: ~~—~~

25 (i) ~~(+)~~ Contracts for the periodic payment of sums of
26 money the consideration for which is the payment of money either
27 in a lump sum or in installments by the recipient or another,

1 ~~when,~~ IF the periodic payments extend over a fixed period in
 2 excess of 1 year ~~—~~ or the periodic payments extend during the
 3 lifetime of the recipient or another.

4 (ii) ~~(2)~~ Contracts for similar consideration whether des-
 5 ignated insurance or otherwise containing the provision for the
 6 conversion of the payments to be received into periodic payments
 7 for a fixed period or for the life of the recipient or another.
 8 Such a contract shall not be ~~deemed~~ CONSIDERED an annuity until
 9 actually converted. The face value of an annuity shall be its
 10 cash reserve value as carried on the books of the obligor.
 11 However, ~~the taxpayer,~~ after once establishing the cash reserve
 12 value, ~~as above stated,~~ THE TAXPAYER may ~~thereafter~~ THEN be
 13 entitled to compute that value annually ~~—~~ upon the assumption
 14 that of amounts received, all excess over the applicable interest
 15 rate guaranteed was return of principal, deductible from the face
 16 value. ~~—, and if~~ IF the interest rate is not guaranteed, then
 17 computation shall be based on an interest assumption of 3% per
 18 annum. "Annuities" ~~shall~~ DOES not include annuity contracts
 19 pending the payment of benefits to the annuitants, ~~nor shall it~~
 20 ~~include~~ OR so-called "annuities" ~~which~~ THAT are in fact
 21 deferred compensation for services rendered payable under old age
 22 retirement or pension provisions of a public authority or private
 23 employer.

24 (D) ~~(c) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVI-
 25 SION, THE "situs" of intangible personal property for the purpose
 26 of taxation under this act shall be the domicile of the owner.
 27 ~~thereof, except that any intangible~~ INTANGIBLE personal

1 property, not otherwise exempt under the laws of this state,
 2 owned by a person having his OR HER domicile outside of this
 3 state ~~—~~ AND placed in the hands of a manager or agent in this
 4 state, to the extent that the intangible personal property is
 5 invested in a course of repeated transactions in obligations of
 6 persons residing in this state or secured by property located in
 7 this state, shall be ~~—deemed—~~ CONSIDERED to have a situs where
 8 the manager or agent resides within this state. ~~—, and except~~
 9 ~~that intangible~~ INTANGIBLE personal property owned by a person
 10 domiciled in this state ~~—~~ AND placed in the hands of a manager
 11 or agent outside of this state, to the extent that the property
 12 is invested in a course of repeated transactions in obligations
 13 of persons residing outside of this state or secured by property
 14 located outside of this state, shall be ~~—deemed—~~ CONSIDERED not
 15 to have a situs in this state.

16 (E) ~~(d)~~ "Income" includes: ~~(1) interest~~

17 (i) INTEREST received upon intangible personal property. ~~→~~
 18 ~~(2) dividends~~

19 (ii) DIVIDENDS and other distributions, whether in the form
 20 of cash or property, to the extent that they represent the yield
 21 of intangible personal property not including, however, a distri-
 22 bution of stock by reason of an order of divestment under the
 23 antitrust laws ~~—which—~~ THAT is considered a return of capital ~~—in~~
 24 ~~section 1111 of the United States~~ PURSUANT TO THE internal reve-
 25 nue code. ~~—as enacted in Public Law 87-403 of the eighty seventh~~
 26 ~~congress of the United States; and (3) all~~

1 (iii) ALL other earnings or yield of intangible personal
 2 property regardless of the name by which designated. For the
 3 purpose of computing the tax imposed under this act, the gross
 4 income, including taxes, charges, and other deductions ~~which~~
 5 THAT may be made ~~therefrom~~ FROM GROSS INCOME, shall be the
 6 basis upon which the tax shall be measured.

7 (F) ~~(e)~~ "Tax year" or "taxable year" means the calendar
 8 year, or the taxpayer's fiscal year when permission is obtained
 9 by the taxpayer from the department to use a fiscal year as the
 10 tax period in lieu of the calendar year.

11 (G) ~~(f)~~ "Commission" or "department" means the revenue
 12 division of the department of treasury.

13 (H) ~~(g)~~ "Taxpayer" means a person liable for ~~any~~ A tax
 14 ~~hereunder~~ UNDER THIS ACT.

15 (I) ~~(h)~~ "Tax" means all taxes, interest, or penalties
 16 levied under this act.

17 (J) ~~(i)~~ "Owner" means a person who: ~~(1) has~~

18 (i) HAS both the entire legal and equitable interest in
 19 intangible personal property or both a legal and equitable estate
 20 ~~therein which~~ IN THE PROPERTY THAT entitles him OR HER to the
 21 present enjoyment ~~thereof; (2) holds~~ OF THE INTANGIBLE PERSONAL
 22 PROPERTY.

23 (ii) HOLDS intangible personal property as an administrator,
 24 executor, receiver, trustee in bankruptcy, or assignee for the
 25 benefit of creditors. ~~;(3) is~~

1 (iii) IS engaged in the business of receiving ~~moneys~~ MONEY
 2 for deposit or savings subject to check or other withdrawal. →
 3 ~~(4) is~~

4 (iv) IS the beneficiary of an inter vivos or testamentary
 5 trust, but only to the extent that the trust embraces intangible
 6 personal property. ~~Where~~ IF there is more than 1 beneficiary,
 7 the person who is entitled to the present enjoyment of the trust
 8 property ~~shall be deemed~~ IS CONSIDERED to be the "owner".
 9 ~~Where~~ IF more than 1 beneficiary is entitled to the present
 10 enjoyment of the trust property, all beneficiaries so entitled
 11 ~~shall be deemed~~ ARE CONSIDERED to be the "owners" according to
 12 their respective interests. ~~Where~~ IF there is more than 1 ben-
 13 eficiary, only some of which are entitled to the present enjoy-
 14 ment of the trust property, those beneficiaries who are so enti-
 15 tled ~~shall be deemed~~ ARE CONSIDERED to be the "owners".
 16 ~~Where~~ IF a trustee of a trust ~~, as hereinbefore mentioned,~~
 17 ~~must~~ IS REQUIRED TO, or in his OR HER discretion may, accumulate
 18 the income ~~thereof~~ FROM THE TRUST, the trustee ~~shall be~~
 19 ~~deemed~~ IS CONSIDERED to be the "owner" to the extent that the
 20 income is so accumulated. A beneficiary OF TRUST PROPERTY domi-
 21 ciled in this state ~~shall be~~ IS taxable irrespective of the
 22 state or other jurisdiction of the creation or administration of
 23 the trust.

24 (K) ~~(j)~~ "Face value" means the amount appearing on the
 25 face of the instrument or other written record evidencing the
 26 intangible personal property, or ~~in case~~ IF there is ~~no~~ NOT
 27 AN instrument or other written record, then the amount shall be

1 determined by other evidence satisfactory to the commission,
2 reduced by payments, if any, ~~which~~ THAT have been made.

3 (1) "MARKET VALUE" MEANS THE AMOUNT THAT PROPERTY WOULD
4 BRING IN AN OPEN MARKET OF WILLING BUYERS AND WILLING SELLERS IN
5 THE ORDINARY COURSE OF TRADE, GENERALLY ESTABLISHED ON THE BASIS
6 OF SALES OF SIMILAR PROPERTY IN THE SAME LOCALITY. IF THERE WERE
7 NO PRIOR SIMILAR SALES, THERE IS NO SINGLE MEASURE OF VALUE AND
8 OTHER EVIDENCE OF VALUE BASED ON RULES THE DEPARTMENT MAY ADOPT
9 MAY BE CONSIDERED.

10 Sec. 2. (1) ~~(a)~~ For the calendar year 1976, ~~and any~~ FOR
11 A fiscal year ending after June 30, 1976, and for each year
12 ~~thereafter~~ or portion ~~thereof~~ OF A YEAR AFTER 1976, there is
13 levied upon each resident or nonresident owner of intangible per-
14 sonal property not ~~hereinafter~~ exempted BY THIS ACT having a
15 situs within this state, and there shall be collected from ~~such~~
16 THE owner an annual specific tax on the privilege of ownership of
17 each item of intangible personal property owned by him OR HER.
18 Except as ~~hereinafter~~ provided IN THIS ACT, the tax on ~~income~~
19 ~~producing~~ intangible personal property shall be AS FOLLOWS:

20 (A) FROM THE CALENDAR YEAR 1976 THROUGH THE CALENDAR YEAR
21 1988 AND FROM A FISCAL YEAR ENDING AFTER JUNE 30, 1976 THROUGH
22 SEPTEMBER 30, 1989, THE TAX ON INCOME PRODUCING INTANGIBLE PER-
23 SONAL PROPERTY SHALL BE 3-1/2% of the income but not less than
24 1/10 of 1% of the face or par value of each item. For the pur-
25 poses of this act, corporate stock or other evidence of corporate
26 ownership having no par or face value ~~shall be deemed~~ IS
27 CONSIDERED to have a face or par value of \$1.00 per share or per

1 unit of other evidence of corporate ownership. Except as
2 ~~hereinafter~~ OTHERWISE provided IN THIS SECTION the tax on non-
3 income producing intangible personal property shall be 1/10 of 1%
4 of the face or par value. The tax on ~~moneys~~ MONEY on hand or
5 in transit shall be at the rate of 20 cents per \$1,000.00 of the
6 face value ~~thereof~~ OF THE MONEY ON HAND OR IN TRANSIT.

7 (B) BEGINNING WITH THE CALENDAR YEAR 1989, A FISCAL YEAR
8 ENDING AFTER SEPTEMBER 30, 1989 AND EACH YEAR OR PORTION OF A
9 YEAR AFTER 1989, THE TAX ON ALL INTANGIBLE PERSONAL PROPERTY
10 SHALL BE 0.1% OF THE MARKET VALUE OF EACH ITEM.

11 (2) ~~(b)~~ For the calendar year 1976 and for each year
12 ~~thereafter~~ or portion ~~thereof~~ OF A YEAR AFTER 1976 there is
13 ~~hereby~~ levied upon each bank doing business in this state and
14 upon each building and loan or savings and loan association doing
15 business in this state an annual tax on the ~~moneys~~ MONEY on
16 deposit in the bank or the savings in a building and loan or sav-
17 ings and loan association less the amount of deposit liabilities
18 or share liabilities owing to the federal government or ~~any~~ AN
19 agency or instrumentality ~~thereof~~ OF THE FEDERAL GOVERNMENT, to
20 this state or ~~any~~ A political subdivision, instrumentality, or
21 agency ~~thereof~~ OF THIS STATE, or to any other bank or building
22 and loan or savings and loan association, and the banks own items
23 of issue. The tax shall be at the rate of 20 cents per \$1,000.00
24 of the face value of the deposits in the bank and at the rate of
25 20 cents per \$1,000.00 of the paid-in value of the share in the
26 building and loan or savings and loan association.

1 (3) ~~(c) The face value, for the purpose~~ FOR PURPOSES of
 2 this section, ~~or any~~ IF THE FACE OR MARKET VALUE OF AN item of
 3 property ~~the face value of which~~ changes during the tax year,
 4 THE FACE OR MARKET VALUE shall be the average value to be com-
 5 puted under rules the department may adopt. ~~, and if any~~ IF AN
 6 item of intangible personal property subject to tax under this
 7 section is owned by the taxpayer for only a portion of the tax
 8 year, the tax levied ~~hereunder~~ shall be reduced in proportion.
 9 The department, at or about the close of each calendar year,
 10 shall retroactively fix a date ~~which~~ THAT shall be the last day
 11 of ~~any~~ A month or other accounting period during the year
 12 ~~which~~ THAT may be used by a taxpayer as the date for the deter-
 13 mination of taxable intangible personal property subject to tax
 14 under this section of which the taxpayer is the owner, and as the
 15 date for the determination of the face OR MARKET value ~~thereof~~
 16 OF THE PROPERTY, irrespective of ~~any~~ A change in the face OR
 17 MARKET value of an item or items of ~~such~~ property IF the value
 18 ~~of which~~ changes during the tax year and irrespective of acqui-
 19 sitions and dispositions of that property during the tax year if
 20 that date is the only date which can be used for the determina-
 21 tion in ~~any~~ A year of the amount of ~~moneys~~ MONEY on hand,
 22 ~~or~~ in transit, or on deposit in a bank or of the paid-in value
 23 of shares of stock in building and loan or savings and loan asso-
 24 ciations of a taxpayer. If the taxpayer elects to use ~~the date~~
 25 ~~so~~ THAT fixed DATE, he ~~shall~~ OR SHE, for the purpose of deter-
 26 mining the tax imposed by this section, ~~be deemed~~ IS CONSIDERED
 27 to have been the owner for the entire tax year of the taxable

1 intangible personal property of which he OR SHE is the owner on
2 that date and to have received the income ~~therefrom~~ FROM THE
3 PROPERTY, if any, for the entire period. The taxpayer may, in
4 lieu of the foregoing retroactive date method, use a true average
5 method, but once having made an election as to either method, the
6 taxpayer shall not change his OR HER method except upon applica-
7 tion to and approval by the department. A change of election
8 shall not become effective until the next tax year succeeding the
9 filing of the application.

10 (4) ~~(d) Where~~ IF, due to death or change of domicile
11 during the tax year, the intangible personal property owned by a
12 taxpayer is subject to the tax ~~hereby~~ levied UNDER THIS ACT for
13 only a part of a tax year, the tax shall be computed in the same
14 manner as though the property had been subject to tax for the
15 entire tax year and shall then be reduced in proportion.

16 However, ~~where an executor or administrator~~ IF A PERSONAL
17 REPRESENTATIVE appointed and qualified in Michigan succeeds to
18 the ownership of intangible personal property previously subject
19 to THE tax ~~hereunder to~~ LEVIED UNDER THIS ACT AND the decedent
20 for whose estate the ~~executor or administrator~~ PERSONAL
21 REPRESENTATIVE is appointed and qualified WAS THE OWNER OF THAT
22 PROPERTY, for the purpose of the computation of the tax, ~~hereby~~
23 ~~levied~~ the combined ownership of the decedent and the ~~executor~~
24 ~~or administrator~~ PERSONAL REPRESENTATIVE during the tax year
25 shall be regarded as the continuous ownership of a single owner,
26 and the ~~executor or administrator shall be deemed~~ PERSONAL

1 REPRESENTATIVE IS CONSIDERED to have been the owner during the
2 entire period.

3 (5) ~~(e)~~ Intangible personal property subject to tax under
4 this act or expressly exempt from the tax ~~hereunder shall be~~
5 UNDER THIS ACT IS exempt from all general property taxes under
6 the laws of this state.

7 Sec. 3. (1) ~~(a)~~ In computing the tax imposed under this
8 act for a tax year, the following deductions may be made:

9 (A) ~~(+)~~ Beginning with the calendar year 1973 AND THROUGH
10 THE CALENDAR YEAR OF 1988, or a fiscal year ending after June 30,
11 1973 AND THROUGH SEPTEMBER 30, 1989, from the total tax as com-
12 puted in accordance with section 2, the sum of \$175.00. The
13 total deduction from the tax by a husband and wife filing a joint
14 return shall not exceed \$350.00. BEGINNING WITH THE CALENDAR
15 YEAR 1989, OR A FISCAL YEAR ENDING AFTER SEPTEMBER 30, 1989, FROM
16 THE TOTAL TAX AS COMPUTED IN ACCORDANCE WITH SECTION 2, THE SUM
17 OF \$200.00. THE TOTAL DEDUCTION FROM THE TAX BY A HUSBAND AND
18 WIFE FILING A JOINT RETURN SHALL NOT EXCEED \$400.00. For a tax
19 return covering a period of less than 1 year, the deduction shall
20 be reduced proportionately. The deduction ~~shall~~ IS not ~~be~~
21 allowed in connection with the tax imposed under this act on
22 ~~moneys~~ MONEY on hand, ~~or~~ in transit, or on deposit in a bank
23 or shares of stock in building and loan or savings and loan
24 associations.

25 (B) ~~(2)~~ From real estate mortgages receivable and land
26 contracts receivable, mortgages payable and land contracts

1 payable on the same property covered by the mortgage or land
2 contract receivable.

3 (2) ~~(b)~~ The following ~~shall be~~ ARE exempt from the tax
4 imposed by this act:

5 (A) ~~(1)~~ Mortgages and land contracts and the evidences of
6 indebtedness secured ~~thereby~~ BY THEM upon which the specific
7 tax imposed by FORMER Act No. 91 of the Public Acts of 1911 ~~, as~~
8 ~~amended, being sections 3640 to 3649 of the Compiled Laws of~~
9 ~~1929,~~ has been paid before September 29, 1939; ~~or~~ a debt or
10 obligation ~~which~~ THAT is secured by a mortgage upon the real
11 estate as may be owned and occupied by library, armory, benevo-
12 lent, charitable, educational, and scientific institutions,
13 incorporated under the laws of this state, with the buildings and
14 other property ~~thereon,~~ ON THE REAL ESTATE while occupied by
15 them solely for the purposes for which they were incorporated; or
16 A DEBT OR OBLIGATION secured by a mortgage upon a house of public
17 worship with the land on which it stands, the furniture ~~therein~~
18 IN THE HOUSE OF PUBLIC WORSHIP, or ~~any~~ A parsonage owned and
19 occupied as a parsonage by ~~any~~ A regularly organized religious
20 society of this state.

21 (B) ~~(2)~~ Bonds, notes, debts, or written or printed obliga-
22 tions upon which the specific tax imposed by FORMER Act No. 142
23 of the Public Acts of 1913 ~~, as amended, being sections 3654 to~~
24 ~~3658 of the Compiled Laws of 1929,~~ was paid before September 29,
25 1939.

26 (C) ~~(3)~~ Bonds or other similar obligations of the state or
27 of a political subdivision of the state.

1 (D) ~~(4)~~ Obligations of the United States, or guaranteed as
2 to principal or interest by the United States, ~~which~~ THAT are
3 exempt from taxation by reason of AN act of congress. The term
4 "United States" includes a possession, agency, or instrumentality
5 of the United States.

6 (E) ~~(5)~~ Bonds, mortgages, and other certificates of
7 indebtedness made and issued by a municipality, organization, or
8 private individual for the purpose of erecting armories in this
9 state.

10 (F) ~~(6)~~ Intangible personal property belonging to benevo-
11 lent, charitable, religious, educational, and nonprofit scien-
12 tific institutions incorporated under the laws of this state.
13 This exemption shall not apply to secret or fraternal societies,
14 ~~—~~ but the intangible personal property of charitable homes of
15 those societies ~~shall be~~ IS exempt.

16 (G) ~~(7)~~ Intangible personal property belonging to posts of
17 the Grand Army of the Republic, sons of veterans' unions, and of
18 the women's relief corps connected ~~there, of~~ WITH THEM, all
19 young men's Christian associations, young women's Christian asso-
20 ciations, women's Christian temperance union associations, young
21 people's Christian unions, and other similar associations.

22 (H) ~~(8)~~ Pensions, including so-called "annuities" payable
23 under old age, retirement, or pension provisions of a public
24 authority or private employer, irrespective of the source of con-
25 tributions ~~thereto. All~~ TO THE PENSIONS; ALL intangible per-
26 sonal property comprising all or a part of the assets of stock
27 bonus, pension, or profit sharing plans or trusts ~~which~~ THAT

1 qualify for exemption from federal income taxes under the
2 internal revenue code; cash surrender values and loan values of
3 insurance policies; annuities before the time when the periodic
4 payments ~~thereunder shall~~ OF THE ANNUITIES actually commence;
5 ~~and~~ and royalties.

6 (I) ~~(9)~~ Intangible personal property belonging to domestic
7 and foreign insurance companies and annuity companies lawfully
8 doing business in this state.

9 (J) ~~(10)~~ Intangible personal property belonging to rail-
10 road companies, union station and depot companies, telegraph com-
11 panies, telephone companies, sleeping car companies, express com-
12 panies, car loaning companies, stock car companies, refrigerator
13 car companies, fast freight companies, and all other companies
14 paying the tax assessed and levied under Act No. 282 of the
15 Public Acts of 1905, as amended, being sections 207.1 to 207.21
16 of the Michigan Compiled Laws.

17 (K) ~~(11)~~ Intangible personal property belonging to banks,
18 national banking associations, savings and loan associations,
19 savings and loan holding companies as defined in 12 U.S.C. 1730a,
20 ~~which~~ THAT pursuant to that section controls a savings and loan
21 association subsidiary located in this state, trust companies,
22 and incorporated bank holding companies as defined in 12
23 U.S.C. 1841, ~~which~~ THAT pursuant to that section control a
24 bank, national banking association, trust company, or industrial
25 bank subsidiary located in this state, doing business in this
26 state under whatever authority organized.

1 (1) ~~(+2)~~ Intangible personal property owned by or
 2 comprising the assets of a person or business enterprise engaged
 3 in business activity as defined by section 3 of Act No. 228 of
 4 the Public Acts of 1975, as amended, being section 208.3 of the
 5 Michigan Compiled Laws, if ~~, were~~ THE income received from
 6 ~~such~~ THAT intangible personal property ~~, it~~ would be consid-
 7 ered, even if deducted or excluded, in determining the amount,
 8 even if zero or negative, of business income as defined by sec-
 9 tion 3 of ~~that act~~ ACT NO. 228 OF THE PUBLIC ACTS OF 1975.

10 (M) ~~(+2a)~~ Intangible personal property belonging to credit
 11 unions doing business in this state under whatever authority
 12 organized.

13 (N) ~~(+3)~~ Intangible personal property ~~which~~ THAT repre-
 14 sents other property taxed under this act or other laws of this
 15 state and is so closely identified ~~therewith~~ TO THAT PROPERTY
 16 that to impose an additional tax under this act would be uncon-
 17 stitutional as double taxation.

18 (O) ~~(+4)~~ Shares of stock in banks, trust companies, and
 19 national banking associations.