

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

690I0054

## HOUSE BILL NO. 1091

Introduced by: Representatives Hundstad, Bradford, Elliott, Hanson, Hargens, Lange, and Sigdestad and Senators Dennert, Kloucek, Kooistra, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an intangible property tax.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Abroad," in one or more foreign nations; in the colonies, dependencies, possessions,  
5 or territories of a foreign nation or of the United States; or in the Commonwealth of  
6 Puerto Rico;

7 (2) "Affiliated group," one or more chains of corporations or limited liability companies  
8 connected through stock ownership or membership interest in a limited liability  
9 company with a common parent corporation or limited liability company, for which:

10 (a) Stock or membership interest in a limited liability company possessing at least  
11 eighty percent of the voting power of all classes of stock or membership  
12 interest in a limited liability company and at least eighty percent of each class  
13 of the nonvoting stock or membership interest in a limited liability company of  
14 each corporation or limited liability company, except for the common parent  
15 corporation or limited liability company, is owned directly by one or more of



- 1 the other corporations or limited liability companies;
- 2 (b) The common parent corporation or limited liability company directly owns  
3 stock or membership interest in a limited liability company possessing at least  
4 eighty percent of the voting power of all classes of stock or membership  
5 interest in a limited liability company and at least eighty percent of each class  
6 of the nonvoting stock or membership interest in a limited liability company of  
7 at least one of the other corporations or limited liability companies; and
- 8 (c) As used in this subdivision, the terms, nonvoting stock, and membership  
9 interest in a limited liability company, do not include nonvoting stock or  
10 membership interest in a limited liability company which is limited and  
11 preferred as to dividends. For purposes of this Act, a common parent may be  
12 a corporation or a limited liability company;
- 13 (3) "Banking organization," is:
- 14 (a) A bank organized and existing under the laws of this state;
- 15 (b) A national bank organized and existing pursuant to the provisions of the  
16 National Bank Act, 12 U.S.C. §§ 21 et seq., as amended on January 1, 2003,  
17 and maintaining its principal office in this state;
- 18 (c) An Edge Act corporation organized pursuant to the provisions of § 25(a) of  
19 the Federal Reserve Act, 12 U.S.C. §§ 611 et seq., as amended on January 1,  
20 2003, and maintaining an office in this state;
- 21 (d) A federal agency licensed pursuant to sections 4 and 5 of the International  
22 Banking Act of 1978 as amended on January 1, 2003, to maintain an office in  
23 this state;
- 24 (e) A savings and loan association organized and existing under the laws of this

1 state; or

2 (f) A federal association organized and existing pursuant to the provisions of the  
3 Home Owners' Loan Act of 1933, 12 U.S.C. §§ 1461 et seq., as amended on  
4 January 1, 2003, and maintaining its principal office in this state;

5 (4) "Beneficial interest," a resident has a beneficial trust in a trust if the resident has a  
6 vested interest, even if subject to divestment, which includes at least a current right  
7 to income and either a power to revoke the trust or a general power of appointment,  
8 as defined in 26 U.S.C. § 2041(b)(1) as amended on January 1, 2003;

9 (5) "Department," the Department of Revenue;

10 (6) "In the state," within the exterior limits of South Dakota;

11 (7) "Intangible property," any property which is not in itself intrinsically valuable, but  
12 which derives its value from that which it represents, including the following:

13 (a) All stocks or shares of incorporated or unincorporated companies, business  
14 trusts, and mutual funds;

15 (b) All notes, bonds, and other obligations for the payment of money;

16 (c) All condominium and cooperative apartment leases of recreation facilities, land  
17 leases, and leases of other commonly used facilities; and

18 (d) Except for any leasehold or other possessory interests in real property owned  
19 by the United States, the state, any political subdivision of the state, any  
20 municipality of the state, or any agency, authority, and other public body  
21 corporate of the state, which are undeveloped or predominantly used for  
22 residential or commercial purposes and upon which rental payments are due;

23 (8) "International banking facility," a set of asset and liability accounts segregated on the  
24 books and records of a banking organization that includes only international banking

1 facility deposits, borrowings, and extensions of credit;

2 (9) "International banking transaction," is:

3 (a) The financing of the exportation from, or the importation into, the United  
4 States or between jurisdictions abroad of tangible personal property or  
5 services;

6 (b) The financing of the production, preparation, storage, or transportation of  
7 tangible personal property or services which are identifiable as being directly  
8 and solely for export from, or import into, the United States or between  
9 jurisdictions abroad;

10 (c) The financing of contracts, projects, or activities to be performed substantially  
11 abroad, except those transactions secured by a mortgage, deed of trust, or  
12 other lien upon real property located in the state;

13 (d) The receipt of deposits or borrowings or the extensions of credit by an  
14 international banking facility, except the loan or deposit of funds secured by  
15 mortgage, deed of trust, or other lien upon real property located in the state;  
16 or

17 (e) Entering into foreign exchange trading or hedging transactions in connection  
18 with the activities described in subsection (d) of this subdivision;

19 (10) "Ministerial function," an act the performance of which does not involve the use of  
20 discretion or judgment;

21 (11) "Money," United States legal tender, certificates of deposit, cashier's and certified  
22 checks, bills of exchange, drafts, the cash equivalent of annuities and life insurance  
23 policies, and similar instruments, which are held by a taxpayer, or deposited with or  
24 held by a banking organization or any other person;

1 (12) "Processing activity," an activity undertaken to administer or service intangible  
2 property in accordance with such terms, guidelines, criteria, or directions as are  
3 provided solely by the owner of the property. Methods, systems, or techniques chosen  
4 by the processor to implement such terms, guidelines, criteria, or directions are not  
5 considered the exercise of management or control;

6 (13) "Taxpayer," any person liable for taxes imposed under this Act and the heirs,  
7 successors, assignees, and transferees of any such person.

8 Section 2. The secretary of revenue shall compute and determine the just value of all  
9 intangible property that has a taxable situs in this state, except for notes and other obligations  
10 for the payment of money, other than bonds, which are secured by mortgage, deed of trust, or  
11 other lien upon real property situated in the state. The secretary shall certify to the county  
12 auditor of each county taxable value of such property and its owner. The county auditor shall  
13 extend a property tax levy on such property in the same manner as real property and such taxes  
14 due and payable in the same manner as taxes on real property.

15 Section 3. An annual intangible tax return shall be filed with the department by each  
16 corporation authorized to do business in this state or doing business in this state and by each  
17 person, regardless of domicile, who owns, controls, or manages intangible property which has  
18 a taxable situs in this state. For purposes of this Act, control or manage does not include any  
19 ministerial function or any processing activity. The return is due on November thirtieth of each  
20 year. The return shall list separately the character, description, and just valuation of all intangible  
21 property.

22 Section 4. No person, corporation, agent, or fiduciary is required to pay the annual tax in any  
23 year if the aggregate annual tax upon the intangible property, after exemptions but before  
24 application of any discount for early filing, is less than sixty dollars. If, an annual return is not

1 required. Agents and fiduciaries shall report for each person for whom intangible property is held  
2 if the aggregate annual tax on such person is sixty dollars or more.

3 Section 5. A husband and wife may file a joint return with regard to all intangible property  
4 held jointly or individually. The husband and wife shall then be jointly liable for the payment of  
5 the annual tax.

6 Section 6. The trustee of a trust is not responsible for returning the trust's intangible property  
7 and is not required to pay any annual tax on it, although the department may require the trustee  
8 to file an informational return.

9 Section 7. Each resident with a beneficial interest, as defined in this Act, in a trust is  
10 responsible for returning the resident's equitable share of the trust's intangible property and  
11 paying the annual tax on it. The trustee of a trust may return and pay the tax on the equitable  
12 shares of each resident having a beneficial interest, in which case the resident does not need to  
13 return the intangible property or pay the tax.

14 Section 8. The personal representative or curator of a South Dakota estate is primarily  
15 responsible for returning the estate's intangible property and paying the annual tax on it. The  
16 heirs or devisees, however, may individually return their equitable shares of the estate's intangible  
17 property and pay the tax on such shares. If this occurs, the personal representative or curator  
18 need not return the intangible property or pay the tax, although the department may require the  
19 personal representative or curator to file an informational return.

20 Section 9. The guardian of the property of a South Dakota incompetent shall return the  
21 incompetent's intangible property and pay the annual tax on it. The custodian of a South Dakota  
22 minor under a gifts to minors or similar act shall return the minor's intangible property which is  
23 subject to the custodianship and pay the annual tax on it.

24 Section 10. If an agent other than a trustee has control or management of intangible

1 property, the principal is primarily responsible for returning the property and paying the annual  
2 tax on it if the principal fails to do so. The agent shall return the property on behalf of the  
3 principal and pay the annual tax on it. The department may require the agent to file an  
4 informational return.

5 Section 11. An affiliated group may elect to make a consolidated return for any year. The  
6 election shall be made by timely filing a consolidated return. Once made, an election may not be  
7 revoked, and it is binding for the tax year. The mere making of a consolidated return does not  
8 in itself provide a business situs in this state for intangible property held by a corporation. The  
9 fact that members of an affiliated group own stock in corporations or membership interest in  
10 limited liability companies which do not qualify under the stock ownership or membership  
11 interest in a limited liability company requirements as members of an affiliated group does not  
12 preclude the filing of a consolidated return on behalf of the qualified members. If a consolidated  
13 return is made, intercompany accounts, including the capital stock or membership interest in a  
14 limited liability company of an includable corporation or limited liability company, other than the  
15 parent, owned by another includable corporation or limited liability company, is not subject to  
16 annual taxation. However, capital stock, or membership interest in a limited liability company,  
17 and other intercompany accounts of a nonqualified member of the affiliated group shall be  
18 subject to annual tax. Each consolidated return shall be accompanied by documentation  
19 identifying all intercompany accounts and containing such other information as the department  
20 shall require. Failure to timely file a consolidated return does not prejudice the taxpayer's right  
21 to file a consolidated return, provided that the failure to file a consolidated return is limited to  
22 one year and the taxpayer's intent to file a consolidated return is evidenced by the taxpayer  
23 having filed a consolidated return for the three years prior to the year the return was not timely  
24 filed.

1 Section 12. Any securities held in margin accounts by a security broker not acting as a  
2 fiduciary shall be returned, and the annual tax on the securities shall be paid, by the customer  
3 owning the securities. The security broker is not required to return or pay the tax on the  
4 securities.

5 Section 13. Except as otherwise provided in this Act, the owner of intangible property is  
6 liable for the payment of annual tax on it, and any other person required to return the property  
7 is liable for the tax if the owner fails to pay it.

8 Section 14. If a bank or savings and loan association acts as a fiduciary or agent of a trust  
9 other than as a trustee, the bank or savings and loan association is not responsible for returning  
10 the trust's intangible property and is not required to pay any annual tax on it. The management  
11 or control of the bank or savings and loan association may not be used as the basis for imposing  
12 any annual tax on any person or any assets of the trust. If a person acts as a fiduciary or agent  
13 for purposes of managing intangible assets owned by another person, the intangible assets do not  
14 have a taxable situs in this state pursuant to this Act solely by virtue of the management or  
15 control of the assets by the person who is not the owner of the assets.

16 Section 15. Except as provided in this section, each bank and financial organization filing  
17 annual intangible tax returns for their customers shall file return information for taxes due using  
18 machine-sensible media. The information required by this section shall be reported by banks or  
19 financial organizations on machine-sensible media, using specifications and instructions of the  
20 department. A bank or financial organization that demonstrates to the satisfaction of the  
21 department that a hardship exists is not required to file intangible tax returns for its customers  
22 using machine-sensible media. A taxpayer may choose to file an annual intangible property tax  
23 return in a form initiated through an electronic data interchange using an advanced encrypted  
24 transmission by means of the Internet or other suitable transmission. The department shall

1 prescribe the format and instructions necessary for such filing to ensure a full collection of taxes  
2 due. The acceptable method of transfer, the method, form, and content of the electronic data  
3 interchange, and the means, if any, by which the taxpayer will be provided with an  
4 acknowledgment shall be prescribed by the department.

5 Section 16. Each corporation incorporated or qualified to do business in this state may elect  
6 each tax year to pay the annual tax on any class of its stock, as agent for its South Dakota  
7 stockholders holding such stock. To make the election, the corporation shall:

8 (1) File written notice with the department on or before November thirtieth of the year  
9 for which the election is made;

10 (2) File an annual return with respect to such stock and its own intangible property;

11 (3) Furnish its South Dakota stockholders with written notice, on or before April first of  
12 the year for which the election is made, that the election is being made, including a  
13 description of the class or classes of stock which are affected. An electing corporation  
14 shall certify on its notice to the department that its stockholders were timely notified  
15 of the election; and

16 (4) No election may be valid unless timely notice is given to the department. Once made,  
17 an election may not be amended or revoked, and it is binding for the tax year.

18 Section 17. On or before November thirtieth of each year, all security dealers and investment  
19 advisers registered under the laws of this state shall file with the department a position statement  
20 as of October thirty-first of the preceding year for each customer whose mailing address is in this  
21 state or a statement that the security dealer or investment adviser does not hold securities on  
22 account for any customer whose mailing address is in this state. The position statement shall  
23 include the customer's name, address, social security number, or federal identification number;  
24 the number of units, value, and description, including the Committee on Uniform Security

1 Identification Procedures (CUSIP) number, if any, of all securities held for the customer; and  
2 such other information as the department may reasonably require. The information required by  
3 this section shall be reported by the dealer or investment adviser on magnetic media, using  
4 specifications and instructions of the department, unless the dealer or investment adviser  
5 demonstrates that an undue hardship exists.

6 The department may require security dealers and investment advisers registered in this state  
7 to transmit once every two years a copy of the department's intangible tax brochure to each  
8 customer whose mailing address is in this state.

9 The department may require property appraisers to send, at a time and in a manner as the  
10 department and the property appraisers jointly determine, a copy of the department's intangible  
11 tax brochure to each owner of South Dakota property.

12 Section 18. All fiduciaries shall serve the department with a copy of each inventory required  
13 to be prepared or filed in the circuit court under general law or rules adopted by the Supreme  
14 Court relating to decedent's estates, trusts, or guardianships. No such inventory required to be  
15 filed in the circuit court may be approved by the court until the copy as required by this section  
16 has been filed with the department. If an inventory is not required to be filed in the circuit court,  
17 the personal representative of a decedent's estate shall serve the department with a copy of the  
18 inventory.

19 Section 19. All intangible property is subject to the annual tax at its just valuation as of  
20 November first of each year. The property shall be valued in the following manner:

21 (1) Shares of stock of corporations, or any interest of a limited partner in any limited  
22 partnership, regularly listed on any public stock exchange or regularly traded over-  
23 the-counter shall be valued at their closing prices on the last business day of October;

24 (2) Shares or units of companies or trusts registered under the Investment Company Act

1 of 1940, as amended on January 1, 2003, including mutual funds, money market  
2 funds, and unit investment trusts where such shares or units are not exempt under this  
3 Act, shall be valued at the net asset value of the shares or units on the last business  
4 day of October;

5 (3) Bonds regularly listed on any public stock exchange or regularly traded over-the-  
6 counter shall be valued at their closing bid prices on the last business day of October;

7 (4) Shares of stocks, bonds, or similar instruments of corporations not listed on any  
8 public stock exchange or not regularly traded over-the-counter shall be valued as of  
9 November first of each year on the basis of those factors customarily considered in  
10 determining fair market value;

11 (5) Accounts receivable shall be valued at their face value as of November first of each  
12 year, less a reasonable allowance for uncollectible accounts;

13 (6) All notes and other obligations shall have a value equal to their unpaid balance as of  
14 November first of each year, unless the taxpayer can establish a lesser value upon  
15 proof satisfactory to the department;

16 (7) All other forms of intangible property shall be valued on the basis of those factors  
17 customarily considered in determining fair market value; and

18 (8) Stocks or shares of a savings and loan association or middle tier stock holding  
19 company, held by a parent mutual holding company, whose depositors are members  
20 of the mutual holding company, which converted from a mutual savings association  
21 to a mutual holding company pursuant to 12 U.S.C. § 1467a.(o), as amended on  
22 January 1, 2003, shall be valued as of November first each year on the same basis as  
23 ownership in the mutual savings association was valued for intangible tax purposes  
24 prior to the conversion. Stocks or shares of such a converted association which are

1 held by individuals or entities other than the parent mutual holding company shall be  
2 valued pursuant to subdivision (1) or subdivision (4) of this section.

3 Section 20. For intangible property that has been deemed to have a taxable situs in this state  
4 solely pursuant to this Act, a credit against the tax imposed by this Act is allowed to a taxpayer  
5 in an amount equal to a like tax lawfully imposed and paid by that taxpayer on the same property  
6 in another state, territory of the United States, or the District of Columbia. For purposes of this  
7 section, the term, like tax, means an ad valorem tax on intangible property that is also subject  
8 to tax under this Act. The credit may not exceed the tax imposed on the property under this Act.  
9 Proof of entitlement to the credit shall be made to the department. Any credit provided by this  
10 section shall apply retroactively.

11 Section 21. For intangible property that has a taxable situs in this state, a credit against the  
12 tax imposed by this Act is allowed to a taxpayer in an amount equal to a like tax lawfully  
13 imposed and paid by that taxpayer on the same property in another state, territory of the United  
14 States, or the District of Columbia when the other taxing authority is also claiming situs under  
15 provisions similar or identical to those in this Act. For purposes of this section, like tax, means  
16 an ad valorem tax on intangible property which is also subject to tax under this Act. The credit  
17 may not exceed the tax imposed on the property under this Act. Proof of entitlement to such a  
18 credit shall be made by the department. Any credit provided by this section shall apply  
19 retroactively.

20 Section 22. The secretary of revenue may promulgate rules pursuant to chapter 1-26  
21 concerning:

- 22 (1) The filing of returns and payment of the tax;
- 23 (2) Determining the application of the tax and exemptions;
- 24 (3) Taxpayer record-keeping requirements; and

- 1       (4)   Determining auditing methods.