

BY: Conference Committee

AMENDMENTS TO HOUSE BILL NO. 297

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 11, strike “providing for a certain tax credit” and substitute “allowing a subtraction modification for certain royalties, interest, or similar income from intangibles”; in line 20, strike the first comma and substitute “and”; and in the same line, strike “, and 10-725”.

AMENDMENT NO. 2

On page 2, after line 26, insert:

“(2) “AGGREGATE EFFECTIVE TAX RATE” MEANS THE SUM OF THE EFFECTIVE RATES OF TAX IMPOSED BY ALL STATES, INCLUDING THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED STATES, WHERE A RELATED MEMBER RECEIVING A PAYMENT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE IS SUBJECT TO TAX AND WHERE THE MEASURE OF THE TAX IMPOSED INCLUDED THE PAYMENT.”;

in line 27, strike “(2)” and substitute “(3)”; after line 34, insert:

“(4) “EFFECTIVE RATE OF TAX IMPOSED” MEANS, AS TO ANY STATE OR POSSESSION OF THE UNITED STATES, THE MAXIMUM STATUTORY TAX RATE IMPOSED BY THE STATE OR POSSESSION MULTIPLIED BY THE APPLICABLE APPORTIONMENT RATE.”;

and in line 35, strike “(3)” and substitute “(5)”.

On page 3, in lines 12, 15, 19, and 38, strike “(4)”, “(5)”, “(6)”, and “(7)”, respectively, and substitute “(6)”, “(7)”, “(8)”, and “(9)”, respectively.

(Over)

On page 4, in line 35, strike “, IN” and substitute “OR”; strike beginning with “, OR” in line 36 down through “GOVERNMENT” in line 37; and in line 39, strike “, BY” and substitute “OR”.

On pages 4 and 5, strike beginning with “, OR” in line 40 on page 4 down through “GOVERNMENT” in line 2 on page 5.

On page 5, in line 9, strike “EFFECTIVE RATE OF TAX” and substitute “AGGREGATE EFFECTIVE TAX RATE”; in lines 9 and 10, strike “IN THE AGGREGATE”; strike beginning with “FROM” in line 10 down through “GOVERNMENT” in line 13; strike beginning with “ALTERNATE” in line 18 down through “MEMBER” in line 20 and substitute “ALTERNATIVE TO THE EFFECTIVE TAX RATE REQUIREMENT OF SUBSECTION (C)(3)(II)3 OF THIS SECTION”; in lines 21, 22, 24, and 26, strike “(1)”, “(I)”, “(II)”, and “(2)”, respectively, and substitute “(I)”, “1.”, “2.”, and “(II)”, respectively; and strike in their entirety lines 30 through 39, inclusive.

AMENDMENT NO. 3

On page 4, in lines 20 and 21, strike “BY CLEAR AND CONVINCING EVIDENCE”.

AMENDMENT NO. 4

On page 5, in line 17, after “(D)” insert “(1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT APPLY IF, IN LIEU OF THE 4% EFFECTIVE TAX RATE REQUIREMENT UNDER SUBSECTION (C)(3)(II)3 OF THIS SECTION, THE AGGREGATE EFFECTIVE TAX RATE IMPOSED ON THE AMOUNTS RECEIVED BY THE RECIPIENT IS GREATER THAN OR EQUAL TO THE AGGREGATE EFFECTIVE TAX RATE THAT WOULD HAVE BEEN IMPOSED ON THE ADDITIONAL INCOME OF THE PAYOR CORPORATION IF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE HAD NOT BEEN DEDUCTED.”

(2)”.

AMENDMENT NO. 5

On page 5, in line 26, after “CIRCUMSTANCES” insert “DEMONSTRATING TO THE SATISFACTION OF THE COMPTROLLER THAT AVOIDANCE OF ANY PORTION OF THE TAX DUE UNDER THIS TITLE IS NOT A PRINCIPAL PURPOSE OF THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST EXPENSE OR INTANGIBLE”

EXPENSE BETWEEN THE CORPORATION AND THE RELATED MEMBER"; in line 28, after the second "STATE" insert "WHERE THE MEASURE OF THE TAX INCLUDES THE PAYMENT"; in the same line, strike "DEMONSTRATE THAT" and substitute "SATISFY"; and in line 29, strike "HAVE BEEN SATISFIED".

AMENDMENT NO. 6

On page 6, strike in their entirety lines 1 through 10, inclusive, and substitute:

"(E) IF THE PAYOR AND THE RECIPIENT ARE BOTH INCLUDED IN A COMBINED OR CONSOLIDATED REPORT FILED IN A JURISDICTION:

(1) FOR PURPOSES OF SUBSECTION (C)(3)(II)2 OF THIS SECTION, THE MEASURE OF THE TAX IMPOSED BY THAT JURISDICTION SHALL BE DEEMED TO INCLUDE THE INTEREST EXPENSE OR INTANGIBLE EXPENSE; AND

(2) FOR PURPOSES OF DETERMINING THE EFFECTIVE RATE OF TAX IMPOSED BY THE JURISDICTION, THE APPLICABLE APPORTIONMENT RATE IS THE LESSER OF:

(I) THE APPORTIONMENT RATE OF THE RECIPIENT CORPORATION, DETERMINED BY USING ONLY THAT CORPORATION'S FACTORS IN THE NUMERATORS AND DENOMINATORS OF THE APPORTIONMENT FORMULA; OR

(II) THE APPORTIONMENT RATE OF THE COMBINED OR CONSOLIDATED GROUP, DETERMINED BY COMBINING THE RECIPIENT CORPORATION'S FACTORS WITH THE FACTORS OF OTHER MEMBERS OF THE GROUP INCLUDED IN THE COMBINED OR CONSOLIDATED REPORT."

AMENDMENT NO. 7

On page 6, after line 10, insert:

"(F) (1) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, TO

(Over)

DETERMINE MARYLAND TAXABLE INCOME, AN AMOUNT IS SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A CORPORATION EQUAL TO THE AMOUNT RECEIVED AS ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES FROM A RELATED MEMBER TO THE EXTENT THE RELATED MEMBER, WITH RESPECT TO THE PAYMENT, IS SUBJECT TO THE ADDITION MODIFICATION UNDER SUBSECTION (B) OF THIS SECTION OR A SIMILAR ADDITION MODIFICATION OF ANOTHER STATE FOR INTANGIBLE EXPENSES OR INTEREST EXPENSES PAID TO RELATED MEMBERS.

(2) THE SUBTRACTION MODIFICATION UNDER THIS SUBSECTION IS NOT ALLOWED TO THE EXTENT THAT:

(I) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE HAD AS A PRINCIPAL PURPOSE THE AVOIDANCE OF STATE INCOME TAXES;

(II) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS NOT PAID PURSUANT TO ARM'S-LENGTH CONTRACTS AT AN ARM'S-LENGTH RATE OF INTEREST OR PRICE; OR

(III) THE AGGREGATE EFFECTIVE TAX RATE IMPOSED ON THE AMOUNTS RECEIVED BY THE RECIPIENT EXCEEDS THE AGGREGATE EFFECTIVE TAX RATE IMPOSED ON THE INCOME OF THE PAYOR CORPORATION.”;

in lines 11 and 21, strike “(F)” and “(G)”, respectively, and substitute “(G)” and “(H)”, respectively; and in line 12, after the second “TO” insert “INCLUDE IN OR”.

On pages 6 and 7, strike in their entirety the lines beginning with line 23 on page 6 through line 25 on page 7, inclusive.

On page 8, in line 24, after “provision” insert “of”.