

HOUSE BILL 297

Unofficial Copy
Q3

2004 Regular Session
(4lr0152)

ENROLLED BILL
-- Ways and Means/Budget and Taxation --

Introduced by **The Speaker and the Minority Leader (By Request - Administration)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 556

1 AN ACT concerning

2 **Office of the Comptroller - Tax Compliance - Holding Companies**

3 FOR the purpose of authorizing the Comptroller to distribute, apportion, or allocate
4 certain tax attributes between and among two or more organizations, trades, or
5 businesses under certain circumstances; requiring that certain interest
6 expenses and certain intangible expenses be added to the federal taxable income
7 of a corporation to determine Maryland modified income under certain
8 circumstances; requiring certain corporations under certain circumstances to
9 include with an income tax return or otherwise file with the Comptroller a
10 certain statement regarding certain dealings and transactions with related
11 corporations; ~~providing for a certain tax credit~~ allowing a subtraction
12 modification for certain royalties, interest, or similar income from intangibles
13 under certain circumstances; providing for a certain estimated payment;
14 allowing the Comptroller to assess interest and penalty for failure to provide the
15 required estimated payment; requiring the Comptroller to adopt certain
16 regulations; defining certain terms; making the provisions of this Act severable;

1 providing for the effective date and application of this Act; and generally
2 relating to tax administration and compliance.

3 BY adding to

4 Article - Tax - General
5 Section 10-109, and 10-306.1, ~~and 10-725~~
6 Annotated Code of Maryland
7 (1997 Replacement Volume and 2003 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article - Tax - General
10 Section 10-804(e)(3)
11 Annotated Code of Maryland
12 (1997 Replacement Volume and 2003 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Tax - General**

16 10-109.

17 ~~(A) FOR ORGANIZATIONS, TRADES, OR BUSINESSES DOING BUSINESS IN THE~~
18 ~~STATE OF MARYLAND, THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR~~
19 ~~ALLOCATE GROSS INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND~~
20 ~~AMONG TWO OR MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT~~
21 ~~INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND~~
22 ~~WHETHER OR NOT AFFILIATED, IF:~~

23 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR
24 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS WITHIN THE
25 MEANING OF § 482 OF THE INTERNAL REVENUE CODE; AND

26 (2) THE COMPTROLLER DETERMINES THAT THE DISTRIBUTION,
27 APPORTIONMENT, OR ALLOCATION IS NECESSARY IN ORDER TO REFLECT AN ARM'S
28 LENGTH STANDARD WITHIN THE MEANING OF § 1.482-1 OF THE REGULATIONS OF
29 THE INTERNAL REVENUE SERVICE OF THE U.S. TREASURY AND TO REFLECT
30 CLEARLY THE INCOME OF THOSE ORGANIZATIONS, TRADES, OR BUSINESSES.

31 (B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL
32 INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING
33 THIS SECTION.

34 10-306.1.

35 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
36 INDICATED.

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

7 (2) (3) "BANK" MEANS:

8 (I) A BANK HOLDING COMPANY AS DEFINED IN THE FEDERAL
 9 BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, OR A BANK, TRUST COMPANY,
 10 SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR
 11 CHARTERED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED
 12 STATES; OR

13 (II) A SUBSIDIARY OR AFFILIATE OF AN ENTITY DESCRIBED IN
 14 ITEM (I) OF THIS PARAGRAPH.

15 (4) "EFFECTIVE RATE OF TAX IMPOSED" MEANS, AS TO ANY STATE OR
 16 POSSESSION OF THE UNITED STATES, THE MAXIMUM STATUTORY TAX RATE
 17 IMPOSED BY THE STATE OR POSSESSION MULTIPLIED BY THE APPLICABLE
 18 APPORTIONMENT RATE.

19 (3) (5) "INTANGIBLE EXPENSE" MEANS:

20 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN
 21 CONNECTION DIRECTLY OR INDIRECTLY WITH THE DIRECT OR INDIRECT
 22 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,
 23 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE
 24 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING
 25 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

26 (II) A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY
 27 OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;

28 (III) A ROYALTY, PATENT, TECHNICAL, OR COPYRIGHT FEE;

29 (IV) A LICENSING FEE; OR

30 (V) ANY OTHER SIMILAR EXPENSE OR COST.

31 (4) (6) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT
 32 APPLICATIONS, TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND
 33 SIMILAR TYPES OF INTANGIBLE ASSETS.

34 (5) (7) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR
 35 INDIRECTLY ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE
 36 CODE FOR PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL
 37 REVENUE CODE.

1 ~~(6)~~ (8) "RELATED ENTITY" MEANS A PERSON THAT, UNDER THE
2 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

3 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL OR A MEMBER OF THE
4 STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE CODE,
5 IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY OWN
6 DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE,
7 AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

8 (II) A STOCKHOLDER OR A STOCKHOLDER'S PARTNERSHIP,
9 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE
10 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, LIMITED LIABILITY
11 COMPANY, ESTATE, TRUST, OR CORPORATION OWN DIRECTLY, INDIRECTLY,
12 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE
13 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR

14 (III) A CORPORATION OR A PARTY RELATED TO THE CORPORATION
15 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE
16 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER
17 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE
18 TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT
19 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

20 ~~(7)~~ (9) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT
21 TO THE TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:

22 (I) A RELATED ENTITY;

23 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE
24 INTERNAL REVENUE CODE; OR

25 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF
26 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE
27 CODE.

28 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ADDITION
29 TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, THE
30 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE
31 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND
32 MODIFIED INCOME.

33 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
34 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE IF THE
35 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,
36 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH
37 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED
38 MEMBERS.

39 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
40 NOT APPLY TO ANY PORTION OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE

1 TO THE EXTENT THAT THE CORPORATION ESTABLISHES ~~BY CLEAR AND CONVINCING~~
2 ~~EVIDENCE~~, AS DETERMINED BY THE COMPTROLLER, THAT:

3 (1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST
4 EXPENSE OR INTANGIBLE EXPENSE BETWEEN THE CORPORATION AND THE
5 RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE AVOIDANCE OF
6 ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

7 (2) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS PAID
8 PURSUANT TO ARM'S-LENGTH CONTRACTS AT AN ARM'S-LENGTH RATE OF INTEREST
9 OR PRICE; AND

10 (3) (I) DURING THE SAME TAXABLE YEAR, THE RELATED MEMBER
11 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED THE INTEREST EXPENSE
12 OR INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER,~~THE~~
13 ~~INTEREST EXPENSE OR INTANGIBLE EXPENSE;~~

14 (II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX
15 MEASURED BY ITS NET INCOME OR RECEIPTS IN THIS STATE ~~AND OTHER STATES OR~~
16 ~~POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS, IN OR ANOTHER STATE~~
17 OR POSSESSION OF THE UNITED STATES, OR IN A FOREIGN NATION THAT HAS
18 ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES
19 GOVERNMENT;

20 2. A MEASURE OF THE TAX IMPOSED BY THIS STATE ~~AND~~
21 ~~OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS, BY~~
22 OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES, OR BY A FOREIGN
23 NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE
24 UNITED STATES GOVERNMENT INCLUDED THE INTEREST EXPENSE OR INTANGIBLE
25 EXPENSE RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION; AND

26 3. ~~THE EFFECTIVE RATE OF TAX PAID BY THE RELATED~~
27 ~~MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED~~
28 ~~STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY~~
29 ~~THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN~~
30 ~~4%; OR~~

31 3. THE EFFECTIVE RATE OF TAX AGGREGATE EFFECTIVE
32 TAX RATE IMPOSED IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY THE
33 RELATED MEMBER FROM THE CORPORATION BY THIS STATE, BY OTHER STATES OR
34 POSSESSIONS OF THE UNITED STATES, AND BY FOREIGN NATIONS THAT HAVE
35 ENTERED INTO COMPREHENSIVE TAX TREATIES WITH THE UNITED STATES
36 GOVERNMENT IS EQUAL TO OR GREATER THAN 4%; OR

37 (III) IN THE CASE OF AN INTEREST EXPENSE, THE CORPORATION
38 AND THE RELATED MEMBER ARE BANKS.

39 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, THE
40 ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT APPLY IF,
41 IN LIEU OF THE 4% EFFECTIVE TAX RATE REQUIREMENT UNDER SUBSECTION

~~1 (C)(3)(II)3 OF THIS SECTION, THE AGGREGATE EFFECTIVE TAX RATE IMPOSED ON THE
2 AMOUNTS RECEIVED BY THE RECIPIENT IS GREATER THAN OR EQUAL TO THE
3 AGGREGATE EFFECTIVE TAX RATE THAT WOULD HAVE BEEN IMPOSED ON THE
4 ADDITIONAL INCOME OF THE PAYOR CORPORATION IF THE INTEREST EXPENSE OR
5 INTANGIBLE EXPENSE HAD NOT BEEN DEDUCTED.~~

6 (2) FOR PURPOSES OF SUBSECTION (C)(3)(II) OF THIS SECTION, THE
7 COMPTROLLER MAY PROVIDE BY REGULATION FOR AN ~~ALTERNATE CALCULATION~~
8 ~~OF THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE ON THE AMOUNTS~~
9 ~~RECEIVED BY THE RELATED MEMBER ALTERNATIVE TO THE EFFECTIVE TAX RATE~~
10 ~~REQUIREMENT OF SUBSECTION (C)(3)(II)3 OF THIS SECTION IF:~~

11 ~~(A)~~ (I) THE RELATED MEMBER:

12 ~~(A)~~ 1. IS SUBJECT IN ANOTHER STATE TO A TAX THAT IS
13 ~~MEASURED BY GROSS RECEIPTS OR IS MEASURED BY NET CAPITAL OR NET WORTH;~~
14 ~~AND~~

15 ~~(A)~~ 2. IS NOT SUBJECT IN THAT STATE TO A TAX MEASURED BY
16 ~~NET INCOME OR RECEIPTS; OR~~

17 ~~(B)~~ (II) UNDER OTHER CIRCUMSTANCES DEMONSTRATING TO THE
18 ~~SATISFACTION OF THE COMPTROLLER THAT AVOIDANCE OF ANY PORTION OF THE~~
19 ~~TAX DUE UNDER THIS TITLE IS NOT A PRINCIPAL PURPOSE OF THE TRANSACTION~~
20 ~~GIVING RISE TO THE PAYMENT OF THE INTEREST EXPENSE OR INTANGIBLE~~
21 ~~EXPENSE BETWEEN THE CORPORATION AND THE RELATED MEMBER, THE~~
22 ~~COMPTROLLER DETERMINES THAT IT IS IMPRACTICAL FOR A RELATED MEMBER~~
23 ~~THAT IS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE WHERE THE MEASURE~~
24 ~~OF THE TAX INCLUDES THE PAYMENT TO DEMONSTRATE THAT SATISFY THE~~
25 ~~REQUIREMENTS OF SUBSECTION (C)(3)(II) OF THIS SECTION HAVE BEEN SATISFIED.~~

26 ~~(C)~~ ~~(I)~~ FOR PURPOSES OF DETERMINING THE EFFECTIVE RATE OF TAX
27 ~~IMPOSED IN THE AGGREGATE BY OTHER JURISDICTIONS UNDER SUBSECTION (C) OF~~
28 ~~THIS SECTION:~~

29 ~~(I)~~ THE EFFECTIVE RATE OF TAX IMPOSED BY A JURISDICTION IS
30 ~~THE STATUTORY RATE MULTIPLIED BY THE APPLICABLE APPORTIONMENT RATE;~~
31 ~~AND~~

32 ~~(II)~~ THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE IS
33 ~~THE SUM OF THE EFFECTIVE RATES OF TAX IMPOSED BY ALL JURISDICTIONS WHERE~~
34 ~~THE RELATED MEMBER IS SUBJECT TO TAX AND WHERE THE MEASURE OF THE TAX~~
35 ~~IMPOSED INCLUDED THE PAYMENT.~~

36 ~~(2)~~ ~~EVEN IF THE PAYMENT IS NOT INCLUDED IN THE RELATED~~
37 ~~MEMBER'S INCOME FOR PURPOSES OF A COMBINED OR CONSOLIDATED RETURN~~
38 ~~FILED IN ANOTHER JURISDICTION, THE MEASURE OF THE TAX IMPOSED BY THAT~~
39 ~~JURISDICTION INCLUDES THE INTEREST EXPENSE OR INTANGIBLE EXPENSE FOR~~
40 ~~PURPOSES OF SUBSECTION (C)(3) OF THIS SECTION IF:~~

1 ~~(I) THE INCOME OF THE CORPORATION THAT PAID, ACCRUED, OR~~
2 ~~INCURRED THE EXPENSE IS INCLUDED IN THE COMBINED OR CONSOLIDATED~~
3 ~~RETURN THAT ALSO INCLUDES THE RELATED MEMBER; AND~~

4 ~~(II) THE PAYMENT IS NOT DEDUCTED BY THE PAYOR~~
5 ~~CORPORATION FOR PURPOSES OF THE COMBINED OR CONSOLIDATED RETURN.~~

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

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

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

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

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

21 ~~(F) (1) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306~~
22 ~~OF THIS SUBTITLE, SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, TO~~
23 ~~DETERMINE MARYLAND TAXABLE INCOME, AN AMOUNT IS SUBTRACTED FROM THE~~
24 ~~FEDERAL TAXABLE INCOME OF A CORPORATION EQUAL TO THE AMOUNT RECEIVED~~
25 ~~AS ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES FROM A~~
26 ~~RELATED MEMBER TO THE EXTENT THE RELATED MEMBER, WITH RESPECT TO THE~~
27 ~~PAYMENT, IS SUBJECT TO THE ADDITION MODIFICATION UNDER SUBSECTION (B) OF~~
28 ~~THIS SECTION OR A SIMILAR ADDITION MODIFICATION OF ANOTHER STATE FOR~~
29 ~~INTANGIBLE EXPENSES OR INTEREST EXPENSES PAID TO RELATED MEMBERS.~~

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

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

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

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

4 ~~(D)~~ ~~(E)~~ (G) THIS SECTION MAY NOT BE CONSTRUED:

5 (1) TO REQUIRE A CORPORATION TO INCLUDE IN OR ADD TO ITS NET
6 INCOME MORE THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE
7 EXPENSE THAT THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED
8 MEMBER; OR

9 (2) TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE
10 COMPTROLLER UNDER THIS ARTICLE, INCLUDING:

11 (I) THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §
12 10-402(D) OF THIS TITLE; OR

13 (II) THE AUTHORITY TO ENTER INTO AGREEMENTS AND
14 COMPROMISES OTHERWISE ALLOWED BY LAW.

15 ~~(E)~~ ~~(G)~~ (H) THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT
16 ARE NECESSARY OR APPROPRIATE TO IMPLEMENT THIS SECTION.

17 ~~40-725.~~

18 ~~(A)~~ ~~(1)~~ ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
19 ~~INDICATED.~~

20 ~~(2) "PAYEE CORPORATION" MEANS A CORPORATION PERSON THAT HAS~~
21 ~~RECEIVED PAYMENTS OF ROYALTIES, INTEREST, OR SIMILAR INCOME FROM~~
22 ~~INTANGIBLES FROM A RELATED MEMBER.~~

23 ~~(3) "RELATED MEMBER" HAS THE SAME MEANING AS SET FORTH IN §~~
24 ~~10-306.1 OF THIS TITLE.~~

25 ~~(B) A PAYEE CORPORATION MAY CLAIM THE CREDIT DESCRIBED IN~~
26 ~~SUBSECTION (C) OF THIS SECTION IF, FOR THE SAME TAXABLE YEAR, THE RELATED~~
27 ~~MEMBER THAT PAID TO THE PAYEE CORPORATION THE ROYALTIES, INTEREST, OR~~
28 ~~SIMILAR INCOME FROM INTANGIBLES:~~

29 ~~(1) IS SUBJECT TO THE ADDITION MODIFICATION SET FORTH IN §~~
30 ~~10-306.1 OF THIS TITLE; AND~~

31 ~~(2) PAID TO THE COMPTROLLER THE FULL AMOUNT OF MARYLAND~~
32 ~~CORPORATION INCOME TAX DEVELOPED ON THE MARYLAND INCOME TAX RETURN~~
33 ~~ON WHICH THE ADDITION MODIFICATION SET FORTH IN § 10-306.1 OF THIS TITLE~~
34 ~~WAS INCLUDED.~~

35 ~~(C)~~ ~~(1)~~ ~~SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE AMOUNT OF~~
36 ~~THE CREDIT ALLOWED UNDER SUBSECTION (B) OF THIS SECTION IS EQUAL TO THE~~

~~1 MARYLAND INCOME TAX LIABILITY OF THE RELATED MEMBER THAT PAID THE
2 ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES TO THE PAYEE
3 CORPORATION, AS COMPUTED ON ITS MARYLAND INCOME TAX RETURN FILED WITH
4 THE COMPTROLLER, REDUCED BY THE MARYLAND INCOME TAX LIABILITY OF THE
5 RELATED MEMBER THAT PAID THE ROYALTIES, INTEREST, OR SIMILAR INCOME
6 FROM INTANGIBLES TO THE PAYEE CORPORATION, COMPUTED WITHOUT REGARD
7 TO THE ADDITION MODIFICATION REQUIRED IN § 10-306.1 OF THIS TITLE.~~

~~8 (2) (I) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS
9 SECTION MAY NOT EXCEED THE STATE INCOME TAX LIABILITY OF THE PAYEE FOR
10 THAT TAXABLE YEAR, CALCULATED BEFORE THE APPLICATION OF THE CREDIT
11 ALLOWED UNDER THIS SECTION AND THE CREDITS ALLOWED UNDER §§ 10-701 AND
12 10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF ANY OTHER CREDITS
13 ALLOWED UNDER THIS SUBTITLE.~~

~~14 (II) THE UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR
15 MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.~~

~~16 (D) THE COMPTROLLER SHALL BY REGULATION PROVIDE FOR THE
17 APPLICATION OF THE CREDIT UNDER THIS SECTION IN THE CASE OF A PAYEE THAT
18 IS AN S CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER
19 ENTITY TREATED AS A PARTNERSHIP FOR TAX PURPOSES.~~

20 10-804.

21 (e) Each person required under this subtitle to file an income tax return or
22 estimated income tax declaration or return shall:

23 (3) attach to an income tax return or otherwise file with the Comptroller
24 any records or statements that the Comptroller requires, including:

25 (i) for an individual who has income tax withheld from salary,
26 wages, or other compensation for personal services, or other payments, a copy of the
27 statement from the person who withholds the tax that states:

28 1. the amount of salary, wages, or other compensation for
29 personal services paid and the income tax withheld; or

30 2. the amount of payments made and the income tax
31 withheld; [and]

32 (ii) a copy of the federal income tax return:

33 1. for a corporation; and

34 2. if the Comptroller requests, for an individual; AND

35 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT
36 IS A MEMBER OF AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER § 1504 OR §
37 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER COSTS

1 OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER
2 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE
3 YEAR.

4 SECTION 2. AND BE IT FURTHER ENACTED, That:

5 (a) all corporations required to make the addition to federal taxable income set
6 forth in § 10-306.1 of the Tax - General Article shall make estimated tax payments
7 under § 10-821 of the Tax - General Article that reflect any increased Maryland
8 corporation income tax liability resulting from the addition; and

9 (b) notwithstanding the provisions of §§ 13-602 and 13-702 of the Tax -
10 General Article, with respect to those corporations required to make the addition to
11 federal taxable income set forth in § 10-306.1 of the Tax - General Article, for all
12 taxable years beginning in calendar year 2004 only, the payment of 110% or more of
13 the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703
14 of the Tax - General Article, does not preclude the Comptroller from assessing:

15 (1) interest, under § 13-602 of the Tax - General Article, on unpaid tax;
16 and

17 (2) penalty, under § 13-702 of the Tax - General Article, on
18 underestimated tax.

19 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision *of* this
20 Act or the application thereof to any person or circumstance is held invalid for any
21 reason in a court of competent jurisdiction, the invalidity does not affect other
22 provisions or any other application of this Act which can be given effect without the
23 invalid provision or application, and for this purpose the provisions of this Act are
24 declared severable.

25 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take
26 effect July 1, 2004, and shall be applicable to all taxable years beginning after
27 December 31, 2003.