

SENATE BILL 187

Unofficial Copy
Q3

2004 Regular Session
(41r0194)

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

Introduced by **The President (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.

President.

CHAPTER 557

1 AN ACT concerning

2 **Office of the Comptroller - Tax Compliance - ~~Holding Companies~~ Settlement**
3 **Period**

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

1 corporation income taxes; requiring the Comptroller, during the Settlement
 2 Period, to waive certain penalties and to assess certain interest at not more than
 3 a certain rate under certain circumstances; providing that certain assessments
 4 for certain taxable years may not be enforced under certain circumstances;
 5 making this Act contingent on the taking effect of another Act; making the
 6 provisions of this Act severable; providing for the effective date and application
 7 of this Act; and generally relating to tax administration and compliance. *and*
 8 generally relating to a settlement period for corporation income taxes.

9 ~~BY adding to~~
 10 ~~Article—Tax—General~~
 11 ~~Section 10-109, 10-306.1, and 10-725~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(1997 Replacement Volume and 2003 Supplement)~~

14 ~~BY repealing and reenacting, with amendments,~~
 15 ~~Article—Tax—General~~
 16 ~~Section 10-804(e)(3)~~
 17 ~~Annotated Code of Maryland~~
 18 ~~(1997 Replacement Volume and 2003 Supplement)~~

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

21 **~~Article—Tax—General~~**

22 ~~10-109.~~

23 ~~(A) FOR ORGANIZATIONS, TRADES, OR BUSINESSES DOING BUSINESS IN THE~~
 24 ~~STATE OF MARYLAND, THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR~~
 25 ~~ALLOCATE GROSS INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND~~
 26 ~~AMONG TWO OR MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT~~
 27 ~~INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND~~
 28 ~~WHETHER OR NOT AFFILIATED, IF:~~

29 ~~(1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR~~
 30 ~~CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS WITHIN THE~~
 31 ~~MEANING OF § 482 OF THE INTERNAL REVENUE CODE; AND~~

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

37 ~~(B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL~~
 38 ~~INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING~~
 39 ~~THIS SECTION.~~

1 ~~40-306.1.~~

2 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
3 ~~INDICATED.~~

4 (2) ~~"BANK" MEANS:~~

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

10 (II) ~~A SUBSIDIARY OR AFFILIATE OF AN ENTITY DESCRIBED IN~~
11 ~~ITEM (I) OF THIS PARAGRAPH.~~

12 (3) ~~"INTANGIBLE EXPENSE" MEANS:~~

13 (I) ~~AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN~~
14 ~~CONNECTION DIRECTLY OR INDIRECTLY WITH THE DIRECT OR INDIRECT~~
15 ~~ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,~~
16 ~~OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE~~
17 ~~EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING~~
18 ~~TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;~~

19 (II) ~~A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY~~
20 ~~OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;~~

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

22 (IV) ~~A LICENSING FEE; OR~~

23 (V) ~~ANY OTHER SIMILAR EXPENSE OR COST.~~

24 (4) ~~"INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS,~~
25 ~~TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES~~
26 ~~OF INTANGIBLE ASSETS.~~

27 (5) ~~"INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY~~
28 ~~ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR~~
29 ~~PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE~~
30 ~~CODE.~~

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

33 (I) ~~A STOCKHOLDER WHO IS AN INDIVIDUAL OR A MEMBER OF THE~~
34 ~~STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE CODE,~~
35 ~~IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY OWN~~

~~1 DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE,
2 AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;~~

~~3 (II) A STOCKHOLDER OR A STOCKHOLDER'S PARTNERSHIP,
4 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE
5 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, LIMITED LIABILITY
6 COMPANY, ESTATE, TRUST, OR CORPORATION OWN DIRECTLY, INDIRECTLY,
7 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE
8 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR~~

~~9 (III) A CORPORATION OR A PARTY RELATED TO THE CORPORATION
10 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE
11 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER
12 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE
13 TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT
14 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.~~

~~15 (7) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO THE
16 TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:~~

~~17 (I) A RELATED ENTITY;~~

~~18 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE
19 INTERNAL REVENUE CODE; OR~~

~~20 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF
21 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE
22 CODE.~~

~~23 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ADDITION
24 TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, THE
25 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE
26 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND
27 MODIFIED INCOME.~~

~~28 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
29 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE IF THE
30 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,
31 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH
32 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED
33 MEMBERS.~~

~~34 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
35 NOT APPLY TO ANY PORTION OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE
36 TO THE EXTENT THAT THE CORPORATION ESTABLISHES, AS DETERMINED BY THE
37 COMPTROLLER, THAT:~~

~~38 (1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST
39 EXPENSE OR INTANGIBLE EXPENSE BETWEEN THE CORPORATION AND THE~~

1 RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE AVOIDANCE OF
2 ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

3 (2) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS PAID
4 PURSUANT TO ARM'S LENGTH CONTRACTS AT AN ARM'S LENGTH RATE OF INTEREST
5 OR PRICE; AND

6 (3) (I) DURING THE SAME TAXABLE YEAR, THE RELATED MEMBER
7 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED THE INTEREST EXPENSE
8 OR INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER, THE
9 INTEREST EXPENSE OR INTANGIBLE EXPENSE;

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

15 2. A MEASURE OF THE TAX IMPOSED BY THIS STATE AND
16 OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS, BY
17 ANOTHER STATE OR POSSESSION OF THE UNITED STATES, OR BY A FOREIGN NATION
18 THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED
19 STATES GOVERNMENT INCLUDED THE INTEREST EXPENSE OR INTANGIBLE
20 EXPENSE RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION; AND

21 3. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED
22 MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED
23 STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY
24 THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN
25 4%; OR

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

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

34 (D) FOR PURPOSES OF SUBSECTION (C)(3)(II) OF THIS SECTION, THE
35 COMPTRROLLER MAY PROVIDE BY REGULATION FOR AN ALTERNATE CALCULATION
36 OF THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE ON THE AMOUNTS
37 RECEIVED BY THE RELATED MEMBER IF:

38 (1) THE RELATED MEMBER;

39 (2) IS SUBJECT IN ANOTHER STATE TO A TAX THAT IS MEASURED
40 BY GROSS RECEIPTS OR IS MEASURED BY NET CAPITAL OR NET WORTH; AND

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

3 ~~(2) UNDER OTHER CIRCUMSTANCES, THE COMPTROLLER DETERMINES~~
4 ~~THAT IT IS IMPRACTICAL FOR A RELATED MEMBER THAT IS SUBJECT TO TAX IN THIS~~
5 ~~STATE OR ANOTHER STATE TO DEMONSTRATE THAT THE REQUIREMENTS OF~~
6 ~~SUBSECTION (C)(3)(II) HAVE BEEN SATISFIED.~~

7 ~~(E) (1) FOR PURPOSES OF DETERMINING THE EFFECTIVE RATE OF TAX~~
8 ~~IMPOSED IN THE AGGREGATE BY OTHER JURISDICTIONS UNDER SUBSECTION (C) OF~~
9 ~~THIS SECTION;~~

10 ~~(I) THE EFFECTIVE RATE OF TAX IMPOSED BY A JURISDICTION IS~~
11 ~~THE STATUTORY RATE MULTIPLIED BY THE APPLICABLE APPORTIONMENT RATE;~~
12 ~~AND~~

13 ~~(II) THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE IS~~
14 ~~THE SUM OF THE EFFECTIVE RATES OF TAX IMPOSED BY ALL JURISDICTIONS WHERE~~
15 ~~THE RELATED MEMBER IS SUBJECT TO TAX AND WHERE THE MEASURE OF THE TAX~~
16 ~~IMPOSED INCLUDED THE PAYMENT.~~

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

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

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

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

28 ~~(1) TO REQUIRE A CORPORATION TO ADD TO ITS NET INCOME MORE~~
29 ~~THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE THAT~~
30 ~~THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED MEMBER; OR~~

31 ~~(2) TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE~~
32 ~~COMPTROLLER UNDER THIS ARTICLE, INCLUDING:~~

33 ~~(I) THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §~~
34 ~~10-402(D) OF THIS TITLE; OR~~

35 ~~(II) THE AUTHORITY TO ENTER INTO AGREEMENTS AND~~
36 ~~COMPROMISES OTHERWISE ALLOWED BY LAW.~~

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

3 ~~10-725.~~

4 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
5 ~~INDICATED.~~

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

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

11 (B) ~~A PAYEE CORPORATION MAY CLAIM THE CREDIT DESCRIBED IN~~
12 ~~SUBSECTION (C) OF THIS SECTION IF, FOR THE SAME TAXABLE YEAR, THE RELATED~~
13 ~~MEMBER THAT PAID TO THE PAYEE CORPORATION THE ROYALTIES, INTEREST, OR~~
14 ~~SIMILAR INCOME FROM INTANGIBLES.~~

15 (1) ~~IS SUBJECT TO THE ADDITION MODIFICATION SET FORTH IN §~~
16 ~~10-306.1 OF THIS TITLE; AND~~

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

21 (C) (1) ~~SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE AMOUNT OF~~
22 ~~THE CREDIT ALLOWED UNDER SUBSECTION (B) OF THIS SECTION IS EQUAL TO THE~~
23 ~~MARYLAND INCOME TAX LIABILITY OF THE RELATED MEMBER THAT PAID THE~~
24 ~~ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES TO THE PAYEE~~
25 ~~CORPORATION, AS COMPUTED ON ITS MARYLAND INCOME TAX RETURN FILED WITH~~
26 ~~THE COMPTROLLER, REDUCED BY THE MARYLAND INCOME TAX LIABILITY OF THE~~
27 ~~RELATED MEMBER THAT PAID THE ROYALTIES, INTEREST, OR SIMILAR INCOME~~
28 ~~FROM INTANGIBLES TO THE PAYEE CORPORATION, COMPUTED WITHOUT REGARD~~
29 ~~TO THE ADDITION MODIFICATION REQUIRED IN § 10-306.1 OF THIS TITLE.~~

30 (2) (I) ~~FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS~~
31 ~~SECTION MAY NOT EXCEED THE STATE INCOME TAX LIABILITY OF THE PAYEE FOR~~
32 ~~THAT TAXABLE YEAR, CALCULATED BEFORE THE APPLICATION OF THE CREDIT~~
33 ~~ALLOWED UNDER THIS SECTION AND THE CREDITS ALLOWED UNDER §§ 10-701 AND~~
34 ~~10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF ANY OTHER CREDITS~~
35 ~~ALLOWED UNDER THIS SUBTITLE.~~

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

38 (D) ~~THE COMPTROLLER SHALL BY REGULATION PROVIDE FOR THE~~
39 ~~APPLICATION OF THE CREDIT UNDER THIS SECTION IN THE CASE OF A PAYEE THAT~~

~~1 IS AN S CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER
2 ENTITY TREATED AS A PARTNERSHIP FOR TAX PURPOSES.~~

3 10-804.

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

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

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

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

13 ~~2. the amount of payments made and the income tax
14 withheld; [and]~~

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

16 ~~1. for a corporation; and~~

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

18 ~~(III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT
19 IS A MEMBER OF AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER § 1504 OR §
20 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER COSTS
21 OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER
22 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE
23 YEAR.~~

24 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

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

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

35 ~~(1) interest, under § 13-602 of the Tax—General Article, on unpaid tax;
36 and~~

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

3 ~~SECTION 3. AND BE IT FURTHER ENACTED, That:~~

4 (a) The Comptroller shall administer a Settlement Period from July 1, 2004
5 through November 1, 2004.

6 (b) The Settlement Period shall be applicable to the Maryland corporation
7 income tax that has been or may be assessed by the Comptroller on the basis of issues
8 that were ruled on by the Maryland Court of Appeals in the decisions in Comptroller
9 of the Treasury v. SYL, Inc., and Comptroller of the Treasury v. Crown Cork & Seal
10 Company (Delaware), Inc., 375 Md. 78 (2003), whether or not the assessment is or
11 was issued before or after the date of the decisions.

12 (c) (1) A taxpayer may elect whether to have additional income tax
13 calculated as though otherwise deductible payments were added back to the paying
14 taxpayer's federal taxable income, or as though the receiving taxpayer were subject to
15 the Maryland corporation income tax.

16 (2) The Maryland income tax may not be imposed more than once for the
17 same transaction.

18 (d) The Comptroller shall waive all penalties attributable to the taxes paid
19 during the Settlement Period.

20 (e) The Comptroller shall assess interest on taxes paid during the Settlement
21 Period at a rate not to exceed 6.5% per year.

22 (f) If all taxes and related interest described above are paid during the
23 Settlement Period for the taxpayer's taxable years beginning on or after January 1,
24 1995 and ending on or before December 31, 2003, then no assessment for any taxable
25 year beginning before January 1, 1995 may be enforced.

26 ~~SECTION 3. 4. AND BE IT FURTHER ENACTED, That if any provision this~~
27 ~~Act or the application thereof to any person or circumstance is held invalid for any~~
28 ~~reason in a court of competent jurisdiction, the invalidity does not affect other~~
29 ~~provisions or any other application of this Act which can be given effect without the~~
30 ~~invalid provision or application, and for this purpose the provisions of this Act are~~
31 ~~declared severable.~~

32 ~~SECTION 4. 5. AND BE IT FURTHER ENACTED, That this Act shall take~~
33 ~~effect July 1, 2004, and, except as provided in Section 3 of this Act, shall be applicable~~
34 ~~to all taxable years beginning after December 31, 2003.~~

35 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
36 ~~July 1, 2004, contingent on the taking effect of Chapter _____ (H.B. 297) of the Acts of~~
37 ~~the General Assembly of 2004, and if Chapter _____ does not become effective, this Act~~
38 ~~shall be null and void without the necessity of further action by the General Assembly.~~

