

Article - Tax - General

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§10–306.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Aggregate effective tax rate” means the sum of the effective rates of tax imposed by this State, other states or possessions of the United States, and foreign nations that have entered into comprehensive tax treaties with the United States government, 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.

(3) “Bank” means:

(i) a bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended, or a bank, trust company, savings bank, or savings and loan association incorporated or chartered under the laws of this State, another state, or the United States; or

(ii) a subsidiary or affiliate of an entity described in item (i) of this paragraph.

(4) “Effective rate of tax imposed” means, as to any state, possession of the United States, or foreign nation, the maximum statutory tax rate imposed by the state, possession, or foreign nation multiplied by the applicable apportionment rate.

(5) “Intangible expense” means:

(i) an expense, loss, or cost for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property, to the extent the expense, loss, or cost is allowed as a deduction or cost in determining taxable income for the taxable year under the Internal Revenue Code;

(ii) a loss related to or incurred in connection directly or indirectly with factoring transactions or discounting transactions;

(iii) a royalty, patent, technical, or copyright fee;

(iv) a licensing fee; or

(v) any other similar expense or cost.

(6) “Intangible property” means patents, patent applications, trade names, trademarks, service marks, copyrights, and similar types of intangible assets.

(7) “Interest expense” means an amount directly or indirectly allowed as a deduction under § 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.

(8) “Related entity” means a person that, under the attribution rules of § 318 of the Internal Revenue Code, is:

(i) a stockholder who is an individual or a member of the stockholder’s family enumerated in § 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder’s family own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer’s outstanding stock;

(ii) a stockholder or a stockholder’s partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder’s partnership, limited liability company, estate, trust, or corporation own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer’s outstanding stock; or

(iii) a corporation or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of § 318 of the Internal Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation’s outstanding stock.

(9) “Related member” means a person that, with respect to the taxpayer during all or any portion of the taxable year, is:

(i) a related entity;

(ii) a component member, as defined in § 1563(b) of the Internal Revenue Code; or

(iii) a person to or from whom there is attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code.

(b) (1) Except as otherwise provided in this section, in addition to the modifications under §§ 10-305 and 10-306 of this subtitle, the amounts under paragraph (2) of this subsection are added to the federal taxable income of a corporation to determine Maryland modified income.

(2) The addition under this subsection includes any otherwise deductible interest expense or intangible expense if the interest expense or intangible expense is directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members.

(c) The addition required under subsection (b) of this section does not apply to any portion of the interest expense or intangible expense to the extent that the

corporation establishes, as determined by the Comptroller, that:

(1) the transaction giving rise to the payment of the interest expense or intangible expense between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this title;

(2) the interest expense or intangible expense was paid pursuant to arm's-length contracts at an arm's-length rate of interest or price; and

(3) (i) during the same taxable year, the related member directly or indirectly paid, accrued, or incurred the interest expense or intangible expense to a person who is not a related member;

(ii) 1. the related member was subject to a tax measured by its net income or receipts in this State, another state or possession of the United States, or a foreign nation that has entered into a comprehensive tax treaty with the United States government;

2. a measure of the tax imposed by this State, another state or possession of the United States, or a foreign nation that has entered into a comprehensive tax treaty with the United States government included the interest expense or intangible expense received by the related member from the corporation; and

3. the aggregate effective tax rate imposed on the amounts received by the related member is equal to or greater than 4%; or

(iii) in the case of an interest expense, the corporation and the related member are banks.

(d) (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) For purposes of subsection (c)(3)(ii) of this section, the Comptroller may provide by regulation for an alternative to the effective tax rate requirement of subsection (c)(3)(ii)3 of this section if:

(i) the related member:

1. is subject in another state or in a foreign nation that has entered into a comprehensive tax treaty with the United States government to a tax that is measured by gross receipts or is measured by net capital or net worth; and

2. is not subject in that state or in that foreign nation to a tax measured by net income or receipts; or

(ii) under other circumstances 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, the Comptroller determines that it is impractical for a related member that is subject to tax in this State, another state, or a foreign nation that has entered into a comprehensive tax treaty with the United States government, where the measure of the tax includes the payment to satisfy the requirements of subsection (c)(3)(ii) of this section.

(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.

(f) (1) In addition to the modifications under §§ 10-305 and 10-306 of this subtitle, subject to paragraph (2) of this subsection, to 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 or of a foreign nation that has entered into a comprehensive tax treaty with the United States government 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.

(g) This section may not be construed:

(1) to require a corporation to include in or add to its net income more than once any amount of interest expense or intangible expense that the corporation pays, accrues, or incurs to a related member; or

(2) to limit or negate any other authority provided to the Comptroller under this article, including:

(i) the authority to make adjustments under § 10-109 or § 10-402(d) of this title; or

(ii) the authority to enter into agreements and compromises otherwise allowed by law.

(h) The Comptroller shall adopt any regulations that are necessary or appropriate to implement this section.

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