

BY: Senator Pinsky

AMENDMENTS TO HOUSE BILL NO. 935, AS AMENDED

AMENDMENT NO. 1

On page 2 of the Budget and Taxation Committee Amendments (HB0935/099834/3), in line 10, after “circumstances;” insert “requiring that certain interest expenses and certain intangible expenses be added to the federal taxable income of a corporation to determine Maryland modified income under certain circumstances; requiring certain corporations under certain circumstances to include with an income tax return or otherwise file with the Comptroller a certain statement regarding certain dealings and transactions with related corporations; requiring the Comptroller to distribute certain income tax revenue from corporations to a certain special fund, to be used only for certain purposes;”.

On page 6 of the Budget and Taxation Committee Amendments, in line 8 of Amendment No. 2, after “10-109,” insert “10-306.1,”; and in line 13, after “10-105(b),” insert “10-804(e)(3),”.

AMENDMENT NO. 2

On page 28 of the Budget and Taxation Committee Amendments, after the next to the last line of Amendment No. 20, insert:

“10-306.1.

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

(2) “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

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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; AND

(V) ANY OTHER SIMILAR EXPENSE OR COST.

(3) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS, TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES OF INTANGIBLE ASSETS.

(4) "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.

(5) "RELATED ENTITY" MEANS A PERSON THAT, APPLYING 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 PARTNERSHIPS, LIMITED LIABILITY

COMPANIES, ESTATES, TRUSTS, AND CORPORATIONS 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.

(6) "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) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, 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,

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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 AN INTEREST EXPENSE OR INTANGIBLE EXPENSE TO THE EXTENT THAT THE CORPORATION ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE, AS DETERMINED BY THE COMPTROLLER, THAT:

(1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST EXPENSE OR THE 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 THE 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 THE INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER; OR

(II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX ON ITS NET INCOME OR RECEIPTS IN THIS STATE OR OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR IN FOREIGN NATIONS;

2. A MEASURE OF THE TAX IMPOSED BY THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS INCLUDED THE INTEREST EXPENSE OR THE INTANGIBLE EXPENSE RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION; AND

3. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY

THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN 4%.

(D) THIS SECTION MAY NOT BE CONSTRUED:

(1) TO REQUIRE A CORPORATION TO 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 OTHERWISE ENTER INTO AGREEMENTS AND COMPROMISES OTHERWISE ALLOWED BY LAW.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, BEFORE MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2-614 AND 2-615 OF THIS ARTICLE, THE COMPTROLLER SHALL DISTRIBUTE THE INCOME TAX REVENUE FROM CORPORATIONS THAT THE COMPTROLLER DETERMINES IS ATTRIBUTABLE TO THE ADDITION MODIFICATION UNDER THIS SECTION TO A SPECIAL FUND, TO BE USED ONLY TO PROVIDE ADDITIONAL FUNDING TO PROVIDE AN ADEQUATE EDUCATION FOR CHILDREN ATTENDING PUBLIC SCHOOLS IN THE STATE IN PREKINDERGARTEN THROUGH GRADE 12, THROUGH IMPLEMENTATION OF THE PROGRAMS COMMONLY KNOWN AS THE BRIDGE TO EXCELLENCE IN PUBLIC SCHOOLS, FIRST ENACTED BY CHAPTER 288 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2002.

(F) THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT ARE NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

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

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

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

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

2. the amount of payments made and the income tax withheld;

[and]

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

1. for a corporation; and

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

(III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT IS A MEMBER OF AN AFFILIATED GROUP OR A CONTROLLED GROUP UNDER § 1504 OR § 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTER-MEMBER COSTS OR EXPENSES AND ALL INTER-MEMBER SALES, EXCHANGES, OR OTHER TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE YEAR.”.

AMENDMENT NO. 3

On page 59 of the Budget and Taxation Committee Amendments, in lines 22 and 23 of Amendment No. 22, strike “the changes to §§ 13-602 and 13-702” and substitute “§§ 10-306.1, 10-804(e)(3), 13-602(a), and 13-702(a)”.

