

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL NO. 187

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 14, after “terms;” insert “requiring the Comptroller to administer a certain Settlement Period during a certain period; providing for the applicability of the Settlement Period to certain corporation income taxes; requiring the Comptroller, during the Settlement Period, to waive certain penalties and to assess certain interest at not more than a certain rate under certain circumstances; providing that certain assessments for certain taxable years may not be enforced under certain circumstances;”.

AMENDMENT NO. 2

On page 2, strike beginning with “FOR” in line 3 down through “MARYLAND,” in line 4; and in line 7, after “STATES,” insert “AND”.

AMENDMENT NO. 3

On page 4, in line 27, after “INCURRED” insert “THE INTEREST EXPENSE OR INTANGIBLE EXPENSE”; and in line 28, strike “, THE INTEREST EXPENSE OR INTANGIBLE EXPENSE”.

AMENDMENT NO. 4

On page 4, strike beginning with “AND” in line 30 down through “NATIONS” in line 31 and substitute “, IN ANOTHER STATE OR POSSESSION OF THE UNITED STATES, OR IN A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT”; strike beginning with “AND” in line 32 down through “NATIONS” in line 33 and substitute “, BY ANOTHER STATE OR POSSESSION OF THE UNITED STATES, OR BY A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT”; and strike in their entirety lines 36 through 40, inclusive, and substitute:

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

AMENDMENT NO. 5

On page 5, after line 2, insert:

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

(1) THE RELATED MEMBER:

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

(II) IS NOT SUBJECT IN THAT STATE TO A TAX MEASURED BY NET INCOME OR RECEIPTS; OR

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

(E) (1) FOR PURPOSES OF DETERMINING THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE BY OTHER JURISDICTIONS UNDER SUBSECTION (C) OF THIS SECTION:

(I) THE EFFECTIVE RATE OF TAX IMPOSED BY A JURISDICTION IS THE STATUTORY RATE MULTIPLIED BY THE APPLICABLE APPORTIONMENT RATE;

AND

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

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

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

(II) THE PAYMENT IS NOT DEDUCTED BY THE PAYOR CORPORATION FOR PURPOSES OF THE COMBINED OR CONSOLIDATED RETURN.”;

and in lines 3 and 13, strike “(D)” and “(E)”, respectively, and substitute “(F)” and “(G)”, respectively.

AMENDMENT NO. 6

On page 5, in line 18, strike the first “CORPORATION”; in the same line, strike the second “CORPORATION” and substitute “PERSON”; in lines 23, 25, and 36, in each instance, strike “CORPORATION”; and in line 33, after “(C)” insert “(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION.”.

On page 6, in line 3, strike “CORPORATION”; and after line 5, insert:

“(2) (I) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED THE STATE INCOME TAX LIABILITY OF THE PAYEE FOR THAT TAXABLE YEAR, CALCULATED BEFORE THE APPLICATION OF THE CREDIT ALLOWED UNDER THIS SECTION AND THE CREDITS ALLOWED UNDER §§ 10-701 AND

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10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF ANY OTHER CREDITS ALLOWED UNDER THIS SUBTITLE.

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

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

AMENDMENT NO. 7

On page 7, after line 4, insert:

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

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

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

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

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

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

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

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

in lines 5 and 11, strike “3.” and “4.”, respectively, and substitute “4.” and “5.”, respectively; and in line 12, after “and” insert “, except as provided in Section 3 of this Act.”.