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Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

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; requiring the Comptroller to assess interest and penalties under
12 certain circumstances; requiring the Comptroller to adopt certain regulations;
13 defining certain terms; providing for the application of this Act; and generally
14 relating to the income tax on corporations.

15 BY repealing and reenacting, with amendments,
16 Article - Tax - General
17 Section 10-804(e)(3)
18 Annotated Code of Maryland
19 (1997 Replacement Volume and 2003 Supplement)

20 BY adding to
21 Article - Tax - General
22 Section 10-109 and 10-306.1
23 Annotated Code of Maryland
24 (1997 Replacement Volume and 2003 Supplement)

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

1 **Article - Tax - General**

2 10-109.

3 (A) THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR ALLOCATE GROSS
4 INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND AMONG TWO OR
5 MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT
6 INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND
7 WHETHER OR NOT AFFILIATED, IF:

8 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR
9 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS; AND

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

15 (B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL
16 INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING
17 THIS SECTION.

18 10-306.1.

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

21 (2) "BANK" MEANS:

22 (I) A BANK HOLDING COMPANY AS DEFINED IN THE FEDERAL
23 BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, OR A BANK, TRUST COMPANY,
24 SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR
25 CHARTERED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED
26 STATES; OR

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

29 (3) "BIOTECHNOLOGY" MEANS THE APPLICATION OF BIOCHEMISTRY,
30 MOLECULAR AND CELLULAR BIOLOGY, GENETICS, BIOENGINEERING, AND RELATED
31 TECHNOLOGIES TO PRODUCE OR MODIFY PRODUCTS, TO IMPROVE PLANTS OR
32 ANIMALS, TO DEVELOP MICROORGANISMS FOR SPECIFIC USES, TO IDENTIFY
33 TARGETS FOR SMALL MOLECULE PHARMACEUTICAL DEVELOPMENT, OR TO
34 TRANSFORM BIOLOGICAL SYSTEMS INTO USEFUL PROCESSES.

35 (4) "INTANGIBLE EXPENSE" MEANS:

36 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN
37 CONNECTION DIRECTLY OR INDIRECTLY WITH, THE DIRECT OR INDIRECT

1 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,
2 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE
3 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING
4 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

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

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

8 (IV) A LICENSING FEE; AND

9 (V) ANY OTHER SIMILAR EXPENSE OR COST.

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

13 (6) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY
14 ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR
15 PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE
16 CODE.

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

19 (I) A RELATED ENTITY;

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

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

25 (8) "RELATED ENTITY" MEANS A PERSON THAT, APPLYING THE
26 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

27 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL, OR A MEMBER OF
28 THE STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE
29 CODE, IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY
30 OWN, DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE
31 AGGREGATE, AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING
32 STOCK;

33 (II) A STOCKHOLDER, OR A STOCKHOLDER'S PARTNERSHIP,
34 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE
35 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIPS, LIMITED LIABILITY
36 COMPANIES, ESTATES, TRUSTS, AND CORPORATIONS OWN, DIRECTLY, INDIRECTLY,

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

3 (III) A CORPORATION, OR A PARTY RELATED TO THE CORPORATION
4 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE
5 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER
6 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE
7 TAXPAYER OWNS, DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT
8 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

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

14 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
15 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE, IF THE
16 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,
17 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH
18 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED
19 MEMBERS.

20 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
21 NOT APPLY TO ANY PORTION OF AN INTEREST EXPENSE OR INTANGIBLE EXPENSE
22 TO THE EXTENT THAT THE CORPORATION ESTABLISHES BY CLEAR AND CONVINCING
23 EVIDENCE, AS DETERMINED BY THE COMPTROLLER, THAT:

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

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

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

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

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

1 3. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED
2 MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED
3 STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY
4 THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN
5 4%; OR

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

8 (D) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
9 NOT APPLY TO ANY INTANGIBLE EXPENSE PAID, ACCRUED, OR INCURRED TO
10 PURCHASE, LICENSE, DEVELOP, OR PROTECT PATENTS, TRADE SECRETS,
11 COPYRIGHTS, OR TRADEMARKS USED IN THE BIOTECHNOLOGY INDUSTRY.

12 (E) THIS SECTION MAY NOT BE CONSTRUED:

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

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

18 (I) THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §
19 10-402(D) OF THIS TITLE; OR

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

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

24 10-804.

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

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

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

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

34 2. the amount of payments made and the income tax
35 withheld; [and]

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

- 1 1. for a corporation; and
- 2 2. if the Comptroller requests, for an individual; AND

3 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT
4 IS A MEMBER OF AN AFFILIATED GROUP OR A CONTROLLED GROUP UNDER § 1504 OR
5 § 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER
6 COSTS OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER
7 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE
8 YEAR.

9 SECTION 2. AND BE IT FURTHER ENACTED, That, for a taxable year
10 beginning after December 31, 2003 but before January 1, 2005, notwithstanding §§
11 13-602 and 13-702 of the Tax - General Article, the Comptroller shall assess interest
12 and penalties under §§ 13-602 and 13-702 of the Tax - General Article if a
13 corporation pays estimated income tax for the taxable year in an amount less than
14 90% of the tax required to be shown on the corporation's income tax return for the
15 taxable year.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect July 1, 2004, and shall be applicable to all taxable years beginning after
18 December 31, 2003.