
By: **Delegate Cryor**

Introduced and read first time: February 13, 2004

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Corporations - Addition Modification for Royalty Payments**

3 FOR the purpose of requiring that certain royalty payments be added to the federal
4 taxable income of a corporation to determine Maryland modified income under
5 certain circumstances; allowing a subtraction modification for certain royalty
6 payments received by the taxpayer under certain circumstances; requiring the
7 Comptroller to waive certain penalties and to assess certain interest at not more
8 than a certain rate under certain circumstances; providing that no payment is
9 required with respect to certain taxable years under certain circumstances;
10 defining certain terms; providing for the application of this Act; and generally
11 relating to an addition modification for certain royalty payments by certain
12 corporations.

13 BY adding to
14 Article - Tax - General
15 Section 10-306.1
16 Annotated Code of Maryland
17 (1997 Replacement Volume and 2003 Supplement)

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

20 **Article - Tax - General**

21 10-306.1.

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

24 (2) "MAJORITY INTEREST" MEANS:

25 (I) IN THE CASE OF A CORPORATION, MORE THAN 50% OF THE
26 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK OF THE CORPORATION
27 OR MORE THAN 50% OF THE CAPITAL, PROFITS, OR BENEFICIAL INTEREST IN THE
28 VOTING STOCK OF THE CORPORATION; AND

1 (II) IN THE CASE OF A PARTNERSHIP, ASSOCIATION, TRUST, OR
2 OTHER ENTITY, MORE THAN 50% OF THE CAPITAL, PROFITS, OR BENEFICIAL
3 INTEREST IN THE PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ENTITY.

4 (3) "RELATED MEMBER" MEANS A PERSON, CORPORATION, OR OTHER
5 ENTITY, INCLUDING AN ENTITY THAT IS TREATED AS A PARTNERSHIP OR OTHER
6 PASS-THROUGH VEHICLE FOR PURPOSES OF FEDERAL TAXATION, WHETHER THE
7 PERSON, CORPORATION, OR ENTITY IS A TAXPAYER OR NOT, WHERE ONE SUCH
8 PERSON, CORPORATION, OR ENTITY, OR SET OF RELATED PERSONS, CORPORATIONS,
9 OR ENTITIES, DIRECTLY OR INDIRECTLY OWNS OR CONTROLS A MAJORITY INTEREST
10 IN ANOTHER ENTITY.

11 (4) "ROYALTY PAYMENT" MEANS A PAYMENT DIRECTLY CONNECTED TO
12 THE USE, MAINTENANCE, OR MANAGEMENT OF LICENSES, TRADEMARKS,
13 COPYRIGHTS, TRADE NAMES, TRADE DRESS, SERVICE MARKS, MASK WORKS, TRADE
14 SECRETS, PATENTS, AND ANY OTHER SIMILAR TYPES OF INTANGIBLE ASSETS AS
15 DETERMINED BY THE COMPTROLLER, AND INCLUDES AMOUNTS ALLOWABLE AS
16 INTEREST DEDUCTIONS UNDER § 163 OF THE INTERNAL REVENUE CODE TO THE
17 EXTENT THE AMOUNTS ARE DIRECTLY OR INDIRECTLY FOR, RELATED TO, OR IN
18 CONNECTION WITH THE USE, MAINTENANCE, OR MANAGEMENT OF THE INTANGIBLE
19 ASSETS.

20 (5) "VALID BUSINESS PURPOSE" MEANS ONE OR MORE BUSINESS
21 PURPOSES, OTHER THAN THE AVOIDANCE OR REDUCTION OF TAXATION, THAT
22 ALONE OR IN COMBINATION CONSTITUTE THE PRIMARY MOTIVATION FOR SOME
23 BUSINESS ACTIVITY OR TRANSACTION THAT CHANGES IN A MEANINGFUL WAY,
24 APART FROM TAX EFFECTS, THE ECONOMIC POSITION OF THE TAXPAYER.

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

30 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
31 OTHERWISE DEDUCTIBLE ROYALTY PAYMENTS IF THE ROYALTY PAYMENTS ARE
32 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED TO A RELATED MEMBER
33 DURING THE TAXABLE YEAR TO THE EXTENT THE ROYALTY PAYMENTS ARE
34 DEDUCTIBLE IN CALCULATING FEDERAL TAXABLE INCOME.

35 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION MAY
36 NOT BE REQUIRED IF AND TO THE EXTENT THAT THE ROYALTY PAYMENTS MEET
37 ANY OF THE FOLLOWING CONDITIONS:

38 (1) (I) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR
39 DIRECTLY OR INDIRECTLY PAID, RECEIVED, ACCRUED, OR INCURRED THE AMOUNT
40 TO OR FROM A PERSON THAT IS NOT A RELATED MEMBER;

41 (II) THE TRANSACTION WAS ENTERED INTO FOR A VALID BUSINESS
42 PURPOSE; AND

1 (III) THE ROYALTY PAYMENTS ARE MADE AT ARM'S LENGTH RATES
2 AND TERMS;

3 (2) (I) THE RELATED MEMBER RECEIVING THE ROYALTY PAYMENTS
4 ACQUIRED THE INTANGIBLE ASSETS, FOR WHICH ROYALTY PAYMENTS ARE BEING
5 MADE, FROM A PERSON OR ENTITY THAT WAS NOT A RELATED MEMBER;

6 (II) THE TRANSACTION WAS ENTERED INTO FOR A VALID BUSINESS
7 PURPOSE; AND

8 (III) THE ROYALTY PAYMENTS ARE MADE AT ARM'S LENGTH RATES
9 AND TERMS;

10 (3) THE ROYALTY PAYMENTS ARE PAID OR INCURRED TO A RELATED
11 MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED
12 STATES, AND THE COUNTRY HAS ENTERED INTO A COMPREHENSIVE INCOME TAX
13 TREATY WITH THE UNITED STATES;

14 (4) THE RELATED MEMBER RECEIVING THE ROYALTY PAYMENTS IS
15 SUBJECT TO A TAX MEASURED BY ITS NET INCOME OR RECEIPTS IN A STATE OR
16 POSSESSION OF THE UNITED STATES IMPOSING A STATUTORY TAX RATE OF AT
17 LEAST 4.5%; OR

18 (5) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENTS
19 BETWEEN THE TAXPAYER AND THE RELATED MEMBER HAS A VALID BUSINESS
20 PURPOSE, OTHER THAN THE AVOIDANCE OF THE PAYMENT OF INCOME TAXES AS
21 DETERMINED UNDER REGULATIONS PROMULGATED BY THE COMPTROLLER, AND
22 THE PAYMENTS ARE MADE AT ARM'S LENGTH RATES AND TERMS.

23 (D) FOR THE PURPOSE OF COMPUTING MARYLAND MODIFIED INCOME, A
24 TAXPAYER SHALL BE ALLOWED TO SUBTRACT ROYALTY PAYMENTS DIRECTLY OR
25 INDIRECTLY RECEIVED FROM A RELATED MEMBER DURING THE TAXABLE YEAR TO
26 THE EXTENT THE PAYMENTS ARE INCLUDED IN THE TAXPAYER'S FEDERAL TAXABLE
27 INCOME, UNLESS THE ROYALTY PAYMENTS WOULD NOT BE REQUIRED TO BE ADDED
28 BACK BY THE TAXPAYER UNDER THIS SECTION OR ANY OTHER PROVISIONS IN THIS
29 SUBTITLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That:

31 (a) The Comptroller shall administer a Settlement Period from July 1, 2004,
32 through December 31, 2004.

33 (b) The Settlement Period shall be applicable to the Maryland corporation
34 income tax that has been or may be assessed by the Comptroller as a result of the
35 Maryland Court of Appeals decisions in Comptroller of the Treasury v. SYL, Inc., and
36 Comptroller of the Treasury v. Crown Cork & Seal Company (Delaware), Inc., 375 Md.
37 78 (2003).

38 (c) (1) A taxpayer may elect whether to have additional income tax
39 calculated as though otherwise deductible payments were added back to the paying

1 taxpayer's federal taxable income, or as though the receiving taxpayer were subject to
2 the Maryland corporation income tax.

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

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

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

9 (f) If all taxes and related interest described above are paid during the
10 Settlement Period for the taxpayer's taxable years beginning on or after January 1,
11 1996, and ending on or before December 31, 2003, then no payment is required with
12 respect to taxable years beginning before January 1, 1996, during the Settlement
13 Period or in any other action by the Comptroller.

14 SECTION 3. AND BE IT FURTHER ENACTED, That, except as provided in
15 Section 2 of this Act, this Act shall take effect July 1, 2004, and shall be applicable to
16 all taxable years beginning after December 31, 2004.