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By: **Senators Miller, Currie, DeGrange, Hogan, Kasemeyer, Kramer, Lawlah,  
and McFadden**

Introduced and read first time: February 1, 2005

Assigned to: Budget and Taxation

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 7, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Income Tax - Corporations - Payments to Related Entities - Foreign Taxes**

3 FOR the purpose of altering certain exceptions to a requirement that certain interest  
4 expenses and certain intangible expenses be added to the federal taxable income  
5 of a corporation to determine Maryland modified income under certain  
6 circumstances; providing for the application of this Act; and generally relating to  
7 a requirement that certain interest expenses and certain intangible expenses be  
8 added to the federal taxable income of a corporation to determine Maryland  
9 modified income under certain circumstances.

10 BY repealing and reenacting, with amendments,  
11 Article - Tax - General  
12 Section 10-306.1  
13 Annotated Code of Maryland  
14 (2004 Replacement Volume)

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

17 **Article - Tax - General**

18 10-306.1.

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

20 (2) "Aggregate effective tax rate" means the sum of the effective rates of  
21 tax imposed by [all states, including] this State [and], other states or possessions of

1 the United States, AND FOREIGN NATIONS THAT HAVE ENTERED INTO  
2 COMPREHENSIVE TAX TREATIES WITH THE UNITED STATES GOVERNMENT, where a  
3 related member receiving a payment of interest expense or intangible expense is  
4 subject to tax and where the measure of the tax imposed included the payment.

5 (3) "Bank" means:

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

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

12 (4) "Effective rate of tax imposed" means, as to any state [or], possession  
13 of the United States, OR FOREIGN NATION, the maximum statutory tax rate imposed  
14 by the state [or], possession, OR FOREIGN NATION multiplied by the applicable  
15 apportionment rate.

16 (5) "Intangible expense" means:

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

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

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

25 (iv) a licensing fee; or

26 (v) any other similar expense or cost.

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

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

32 (8) "Related entity" means a person that, under the attribution rules of §  
33 318 of the Internal Revenue Code, is:

34 (i) a stockholder who is an individual or a member of the  
35 stockholder's family enumerated in § 318 of the Internal Revenue Code, if the  
36 stockholder and the members of the stockholder's family own directly, indirectly,

1 beneficially, or constructively, in the aggregate, at least 50% of the value of the  
2 taxpayer's outstanding stock;

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

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

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

15 (i) a related entity;

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

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

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

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

29 (c) The addition required under subsection (b) of this section does not apply to  
30 any portion of the interest expense or intangible expense to the extent that the  
31 corporation establishes, as determined by the Comptroller, that:

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

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

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

4 (ii) 1. the related member was subject to a tax measured by its  
5 net income or receipts in this State [or], another state or possession of the United  
6 States, OR A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX  
7 TREATY WITH THE UNITED STATES GOVERNMENT;

8 2. a measure of the tax imposed by this State [or], another  
9 state or possession of the United States, OR A FOREIGN NATION THAT HAS ENTERED  
10 INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT  
11 included the interest expense or intangible expense received by the related member  
12 from the corporation; and

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

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

17 (d) (1) Subject to regulations adopted by the Comptroller, the addition  
18 required under subsection (b) of this section does not apply if, in lieu of the 4%  
19 effective tax rate requirement under subsection (c)(3)(ii)3 of this section, the  
20 aggregate effective tax rate imposed on the amounts received by the recipient is  
21 greater than or equal to the aggregate effective tax rate that would have been  
22 imposed on the additional income of the payor corporation if the interest expense or  
23 intangible expense had not been deducted.

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

27 (i) the related member:

28 1. is subject in another state OR IN A FOREIGN NATION THAT  
29 HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES  
30 GOVERNMENT to a tax that is measured by gross receipts or is measured by net  
31 capital or net worth; and

32 2. is not subject in that state OR IN THAT FOREIGN NATION  
33 to a tax measured by net income or receipts; or

34 (ii) under other circumstances demonstrating to the satisfaction of  
35 the Comptroller that avoidance of any portion of the tax due under this title is not a  
36 principal purpose of the transaction giving rise to the payment of the interest expense  
37 or intangible expense between the corporation and the related member, the  
38 Comptroller determines that it is impractical for a related member that is subject to  
39 tax in this State [or], another state, OR A FOREIGN NATION THAT HAS ENTERED INTO  
40 A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT, where

1 the measure of the tax includes the payment to satisfy the requirements of subsection  
2 (c)(3)(ii) of this section.

3 (e) If the payor and the recipient are both included in a combined or  
4 consolidated report filed in a jurisdiction:

5 (1) for purposes of subsection (c)(3)(ii)2 of this section, the measure of the  
6 tax imposed by that jurisdiction shall be deemed to include the interest expense or  
7 intangible expense; and

8 (2) for purposes of determining the effective rate of tax imposed by the  
9 jurisdiction, the applicable apportionment rate is the lesser of:

10 (i) the apportionment rate of the recipient corporation, determined  
11 by using only that corporation's factors in the numerators and denominators of the  
12 apportionment formula; or

13 (ii) the apportionment rate of the combined or consolidated group,  
14 determined by combining the recipient corporation's factors with the factors of other  
15 members of the group included in the combined or consolidated report.

16 (f) (1) In addition to the modifications under §§ 10-305 and 10-306 of this  
17 subtitle, subject to paragraph (2) of this subsection, to determine Maryland taxable  
18 income, an amount is subtracted from the federal taxable income of a corporation  
19 equal to the amount received as royalties, interest, or similar income from intangibles  
20 from a related member to the extent the related member, with respect to the  
21 payment, is subject to the addition modification under subsection (b) of this section or  
22 a similar addition modification of another state OR OF A FOREIGN NATION THAT HAS  
23 ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES  
24 GOVERNMENT for intangible expenses or interest expenses paid to related members.

25 (2) The subtraction modification under this subsection is not allowed to  
26 the extent that:

27 (i) the transaction giving rise to the payment of the interest  
28 expense or intangible expense had as a principal purpose the avoidance of State  
29 income taxes;

30 (ii) the interest expense or intangible expense was not paid  
31 pursuant to arm's-length contracts at an arm's-length rate of interest or price; or

32 (iii) the aggregate effective tax rate imposed on the amounts  
33 received by the recipient exceeds the aggregate effective tax rate imposed on the  
34 income of the payor corporation.

35 (g) This section may not be construed:

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

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

3 (i) the authority to make adjustments under § 10-109 or §  
4 10-402(d) of this title; or

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,  
11 2004.