

(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, 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 the interest expense or intangible expense to the extent that the corporation establishes, as determined by the Comptroller, that:

(1) the transaction giving rise to the payment of the interest expense or 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 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 intangible expense to a person who is not a related member;

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

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

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

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

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

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

(i) the related member: