

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

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

(ii) under other circumstances demonstrating to the satisfaction of the Comptroller that avoidance of any portion of the tax due under this title is not a principal purpose of the transaction giving rise to the payment of the interest expense or intangible expense between the corporation and the related member, the Comptroller determines that it is impractical for a related member that is subject to tax in this State [or], another state, OR A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT, where the measure of the tax includes the payment to satisfy the requirements of subsection (c)(3)(ii) of this section.

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

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

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

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

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

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

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

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