

(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;

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

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

(g) This section may not be construed:

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

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

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

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

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

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