

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 AN INTEREST EXPENSE OR INTANGIBLE EXPENSE TO THE EXTENT THAT THE CORPORATION ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE, AS DETERMINED BY THE COMPTROLLER, THAT:

(1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST EXPENSE OR THE 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 THE 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 THE INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER; OR

(II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX ON MEASURED BY ITS NET INCOME OR RECEIPTS IN THIS STATE OR OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR IN FOREIGN NATIONS;

2. A MEASURE OF THE TAX IMPOSED BY THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS INCLUDED THE INTEREST EXPENSE OR THE INTANGIBLE EXPENSE RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION; AND

3. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION 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) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT APPLY TO ANY INTANGIBLE EXPENSE PAID, ACCRUED, OR INCURRED TO PURCHASE, LICENSE, DEVELOP, OR PROTECT PATENTS, TRADE SECRETS, COPYRIGHTS, OR TRADEMARKS USED IN THE BIOTECHNOLOGY INDUSTRY.

(E) THIS SECTION MAY NOT BE CONSTRUED:

(1) TO REQUIRE A CORPORATION TO 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