

~~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~~

~~3. THE EFFECTIVE RATE OF TAX AGGREGATE EFFECTIVE TAX RATE IMPOSED IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY THE RELATED MEMBER FROM THE CORPORATION BY THIS STATE, BY OTHER STATES OR POSSESSIONS OF THE UNITED STATES, AND BY FOREIGN NATIONS THAT HAVE ENTERED INTO COMPREHENSIVE TAX TREATIES WITH THE UNITED STATES GOVERNMENT 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 ALTERNATE CALCULATION OF THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY THE RELATED MEMBER ALTERNATIVE TO THE EFFECTIVE TAX RATE REQUIREMENT OF SUBSECTION (C)(3)(II)3 OF THIS SECTION IF:~~

~~(A) (1) THE RELATED MEMBER:~~

~~(A) 1. IS SUBJECT IN ANOTHER STATE TO A TAX THAT IS MEASURED BY GROSS RECEIPTS OR IS MEASURED BY NET CAPITAL OR NET WORTH; AND~~

~~(A) 2. IS NOT SUBJECT IN THAT STATE TO A TAX MEASURED BY NET INCOME OR RECEIPTS; OR~~

(2) (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 WHERE THE MEASURE OF THE TAX INCLUDES THE PAYMENT TO DEMONSTRATE THAT SATISFY THE REQUIREMENTS OF SUBSECTION (C)(3)(II) OF THIS SECTION HAVE BEEN SATISFIED.