

HOUSE BILL 2372

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 67,
relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2004(23), is amended by deleting the current language in its entirety and by substituting instead the following:

(23) "Intangible expense" means an expense related to, or in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income on a separate entity basis. "Intangible expense" also means interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

SECTION 2. Tennessee Code Annotated, Section 67-4-2006(b)(2)(N), is amended by deleting the current language in its entirety and by substituting instead the following:

(N)

(i) Any intangible expense, or portion thereof, that is paid, accrued or incurred in connection with a transaction with one (1) or more affiliates if the commissioner determines, upon application by the taxpayer, that such expense, or portion thereof, did not have as its principal purpose the avoidance of the tax levied by this part. The commissioner's review of the taxpayer's application shall include the considerations outlined in § 67-4-2014(c). The commissioner shall

approve any application for the deduction of any intangible expense, or portion thereof, that is:

(a) Paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States; or

(b) Paid, accrued, or incurred to an affiliate when the affiliate, during the same taxable year, has directly or indirectly paid, accrued or incurred such portion to an entity that is not an affiliate.

(ii) The taxpayer's application for the deduction in subdivision (i) shall be made at such time and upon such forms and in such manner as prescribed by the commissioner and shall include such information as the commissioner may require.

(iii)

(a) If the commissioner approves the application for deduction, or a portion thereof, such determination shall remain in effect so long as the taxpayer submits annually to the commissioner a certification that the facts and circumstances surrounding the transaction remain substantially unchanged; provided, however, the commissioner is authorized to require that the taxpayer reapply for the deduction beginning no sooner than five (5) years following the taxpayer's most recent application.

(b) If the commissioner denies the application for deduction, or a portion thereof, and the taxpayer nevertheless deducts the disallowed intangible expense, the commissioner shall assess the taxpayer any applicable tax, interest, and penalty resulting from the disallowance of

such deduction, and the taxpayer shall be entitled to the remedies contained in chapter 1, part 18, of this title to contest such assessment.

(c) If the application is submitted to the commissioner at least sixty (60) days before the due date of the return and the commissioner has neither approved nor denied the application by the due date of the return, no penalty shall be assessed based on any disallowance of the deduction for intangible expenses, and no interest shall accrue on any such assessment from the due date of the return until the date upon which the commissioner issues a denial of the application.

SECTION 3. Tennessee Code Annotated, Section 67-4-2006(b)(2)(O), is amended by deleting the language “is not disclosed as required by subdivision (d)(1) or is otherwise disallowed under the provisions of this part” and by substituting instead the language “is included in the affiliate’s Tennessee net earnings or net losses and is not deducted by the affiliate under subdivision (b)(2)(N) of this section”.

SECTION 4. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Any taxpayer that pays, accrues or incurs intangible expenses as a result of a transaction with one (1) or more affiliates and fails to add such expenses to net earnings or net losses in accordance with subdivision (b)(1)(K) shall be subject to a negligence penalty as set forth in Section 67-1-804(b)(2).

SECTION 5. Tennessee Code Annotated, Section 67-1-804(b)(2), is amended by deleting the first sentence and substituting instead the following:

When any person, upon the initial filing of the person’s franchise and excise tax return, fails to comply with the requirements described in Sections 67-4-2006(d) or 67-4-2006(e) and such failure is determined by the commissioner to be due to negligence,

there shall be imposed a penalty equal to the greater of ten thousand dollars (\$10,000) or fifty percent (50%) of any adjustment to the initially filed return made under Sections 67-4-2006(b)(1)(K) or 67-4-2006(e).

SECTION 6. This act shall take effect on July 1, 2012, and shall apply to all tax years ending on or after such date, the public welfare requiring it.