

Enrolled Senate Bill 181

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CHAPTER

AN ACT

Relating to tax treatment of expense for use of intangible property paid to related member.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 314.

SECTION 2. (1) As used in this section:

(a) "Intangible expense" includes:

(A) Expenses, losses and costs for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before net operating loss deductions and special deductions for the taxable year under the Internal Revenue Code;

(B) Amounts directly or indirectly allowed as deductions under section 163 of the Internal Revenue Code for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to or in connection with the expenses, losses and costs described in subparagraph (A) of this paragraph;

(C) Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

(D) Royalty, patent, technical and copyright fees;

(E) Licensing fees; and

(F) Other similar expenses and costs.

(b) "Intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

(c) "Related entity" means:

(A) A stockholder who is an individual, or a member of the stockholder's family as defined in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

(B) A stockholder, partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts or corporations own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

(C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corpo-

ration under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(d) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is:

(A) A related entity;

(B) A component member as defined in section 1563(b) of the Internal Revenue Code;

(C) A person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code; or

(D) A person that, notwithstanding the person's form of organization, bears the same relationship to the taxpayer as a person described in this paragraph.

(e) "Valid business purpose" means one or more business purposes, other than the evasion or improper avoidance of taxation, that alone or in combination constitute the primary motivation for a business activity or transaction, if the activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into a new business market.

(2) To derive Oregon taxable income there shall be added to federal taxable income amounts:

(a) That are intangible expenses;

(b) That are otherwise deductible;

(c) That have been received by one or more related members that are not included in the same state tax return as the taxpayer; and

(d) That have been directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more related members.

(3)(a) A taxpayer is allowed a credit against the taxes otherwise due under ORS chapter 317 or 318 if a related member pays tax on the same income that has been added back under subsection (2) of this section.

(b) The amount from which the credit shall be derived shall be the greater of:

(A) The tax paid by the related member with respect to the portion of the related member's income representing the intangible expense paid, accrued or incurred by the taxpayer; or

(B) The tax that would have been paid by the related member with respect to that portion of the related member's income if that portion had not been offset by expenses or losses and the resulting tax liability had not been offset by any other credit.

(c) If the taxpayer is subject to apportionment, the credit shall be calculated by multiplying the amount in paragraph (b) of this subsection by the taxpayer's apportionment factor provided by ORS 314.605 to 314.675.

(d) The credit may not exceed that portion of the taxpayer's liability that results from the net income taxed as a result of subsection (2) of this section.

(4) The adjustment required in subsection (2) of this section and the credit allowed in subsection (3) of this section do not apply to any portion of the intangible expense that the related member directly or indirectly paid, accrued or incurred to a person that is not a related member, if the transaction giving rise to the intangible expense was undertaken for a valid business purpose.

SECTION 3. Section 2 of this 2009 Act applies to tax years beginning on or after January 1, 2010.

Passed by Senate March 11, 2009

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Secretary of Senate

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President of Senate

Passed by House May 29, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

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Secretary of State