

SENATE BILL 3428  
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4 and Chapter 6, relative to taxation.

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

**SECTION 1:** Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subitem (L):

(L) Any otherwise deductible intangible expense paid, accrued or incurred in connection with a transaction with one or more affiliated business entities that are primarily engaged in the acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property. The adjustments in this subdivision shall not apply to such portion of the intangible expenses that the taxpayer can establish meets one (1) of the following:

- (i) The taxpayer paid, accrued, or incurred such portion to a person during the same fiscal year who is not an affiliated business entity; or
- (ii) The transaction giving rise to the intangible expenses has a substantial business purpose and economic substance and contains terms and conditions comparable to a similar arm's length transaction between nonaffiliated business entities.

For purposes of subdivision (i) and (ii) above, the taxpayer shall establish that it meets the requirements in accordance with the procedures set forth in subsection (d). Nothing in this subdivision shall be construed to limit or negate the provisions of Sections 67-4-2014 or 67-4-2112 where deemed appropriate by the commissioner.

For purposes of this section the following definitions shall apply:

(a) "Affiliated business entity" means a business entity in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest or a business entity that, directly or indirectly, has more than fifty percent (50%) ownership interest in the taxpayer.

(b) "Intangible expense" means expenses related to, or in connection with, the 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 federal taxable income for purposes of subsection (a) above.

(c) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, formulas, designs, patterns, processes, formats, and similar types of intangible assets.

**SECTION 2: Tennessee Code Annotated, Section 67-4-2006(b)(2)**, is amended by adding the following as a new subitem (N):

(N) Any item of income included in the computation of the taxpayer's federal taxable income for purposes of subsection (a) above, that, due to the provisions Section 67-4-2006(b)(1)(L), has not been allowed as an expense deduction for an affiliated business entity subject to the excise tax levied by this part.

**SECTION 3:** Tennessee Code Annotated, Section 67-4-2006, is amended by adding the following as a new subsection immediately after the existing subsection (c) and relettering the remaining subsections accordingly:

The following procedures must be used to establish that a taxpayer meets the requirements set forth in Tennessee Code Annotated, Section 67-4-2006(b)(1)(L)(i) and (ii):

(1) The taxpayer must first submit to the Commissioner a written request seeking approval for an exemption from making the required adjustments to the taxpayer's net earnings or net losses. Documentation as required by the

Commissioner must be provided to establish that the intangible expense meets the requirements set forth in (i) or (ii).

For purposes of determining whether a transaction giving rise to the intangible expense meets the requirements set forth in (ii) the criteria used shall include but is not limited to the following:

(a) Whether the affiliated business entity licensing the intangibles has substantial business operations as evidenced by permanent office space and full time employees dedicated to the maintenance and protection of the intangibles;

(b) Whether the affiliated business entity is engaged in business activities separate and apart from the licensing of the intangibles to the taxpayer;

(c) Whether legal title and possession of the intangibles is held by the affiliated business entity and whether consideration was involved in the transfer of the intangible property to such entity;

(d) Whether royalty payments received by the affiliated business entity are retained and invested in the ongoing operations of the affiliated business entity's business or returned to the affiliated group as a dividend or loan;

(e) Whether the royalty rates paid were outside the range of royalty rates paid by parties acting at arm's length;

(f) Whether the affiliated business entity assumes and pays the expenses of maintaining and defending the intangibles; and

(g) Any other documentation the Commissioner deems necessary.

(2) After approval of the request, the Commissioner shall issue a letter to the taxpayer stating that the taxpayer has met the requirements set forth in subdivision (i) or (ii). This letter shall also state the effective date of this approval and shall apply to the first and subsequent tax periods beginning on or after the effective date.

(3) The approval shall continue in effect so long as the circumstances justifying the approval remain substantially unchanged, or until changed or discontinued by the department, whichever occurs first. In the event that the department discontinues the approval, reasonable notice shall be given to the taxpayer affected, and any such discontinuation shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

(4) If the request for exemption is denied, the taxpayer may apply to the Commissioner for a hearing.

(5) As authorized, the hearing is to be held and conducted in accordance with the procedure as outlined under the provisions of Tennessee Code Annotated, Section 67-1-105.

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

The amount computed under subsections (a), (b), (c), and (d) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in Tennessee Code Annotated, Section 67-4-2007.

**SECTION 5.** Tennessee Code Annotated, Section 67-4-2108(a)(6), is amended by deleting subdivision (C) in its entirety and substituting instead the following:

(C) "Finished goods inventory" means tangible personal property that is:

(i) Owned by the taxpayer;

(ii) Stored in a facility used primarily for manufacturing, warehousing, or distribution of such inventory;

(iii) Held for wholesale or retail sale by the taxpayer, but not sold over-the-counter to consumers at the location where stored;

(iv) Shown as inventory on the taxpayer's books and records kept in accordance with generally accepted accounting principles; and

(v) In need of no further fabrication or processing by or for the taxpayer; except, in the case of configuring, testing or packaging of computer products;

**SECTION 6.** Tennessee Code Annotated, Section 67-4-2008(a), is amended by inserting the following as a new subdivision after subdivision (7) and renumbering the following subdivisions accordingly:

(8) Any limited partnership or limited liability company organized exclusively for the purpose of providing affordable housing that meets the following criteria:

(a) The entity must have received an allocation of low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; and

(b) An “extended low-income housing commitment” as defined in Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended, must be in effect with respect to each residential building owned by the entity for the period covered by the return.

**SECTION 7.** Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

Any taxpayer that moves otherwise taxable aircraft into Tennessee in conjunction with establishing a new “headquarters facility” as defined by § 67-6-224 shall be exempt from any sales and use tax liability that arises solely as a result of moving such aircraft into the state.

**SECTION 8.** Sections 1 through 5 of this act shall take effect upon becoming a law and apply to tax periods ending on or after July 1, 2004, the public welfare requiring it. Section 6 of this act shall take effect upon becoming a law and apply to tax periods ending on or after June 30, 2003, the public welfare requiring it. Section 7 of this act shall take effect upon becoming a law and expire on July 1, 2008, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.