

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1365 be amended to read as follows:

- 1 Page 3, delete lines 7 through 42.
- 2 Page 4, delete lines 1 through 34.
- 3 Page 10, delete lines 7 through 15, begin a new line block indented
- 4 and insert:
5 **"(20) Subject to subsection (g), add an amount equal to**
- 6 **intangibles payments described in section 34 of this chapter**
- 7 **that are directly or indirectly paid, accrued, or incurred to a**
- 8 **related member during the taxable year to the extent the**
- 9 **intangibles payments are deductible in calculating federal**
- 10 **adjusted gross income under the Internal Revenue Code."**
- 11 Page 10, delete lines 39 through 42, begin a new line block indented
- 12 and insert:
13 **"(6) Subject to subsection (g), add an amount equal to**
- 14 **intangibles payments described in section 34 of this chapter**
- 15 **that are directly or indirectly paid, accrued, or incurred to a**
- 16 **related member during the taxable year to the extent the**
- 17 **intangibles payments are deductible in calculating federal**
- 18 **taxable income under the Internal Revenue Code."**
- 19 Page 11, delete lines 1 through 5.
- 20 Page 11, delete lines 29 through 34, begin a new line block indented
- 21 and insert:
22 **"(6) Subject to subsection (g), add an amount equal to**
- 23 **intangibles payments described in section 34 of this chapter**

1 **that are directly or indirectly paid, accrued, or incurred to a**
2 **related member during the taxable year to the extent the**
3 **intangibles payments are deductible in calculating federal**
4 **taxable income under the Internal Revenue Code."**

5 Page 12, delete lines 16 through 21, begin a new line block indented
6 and insert:

7 **"(6) Subject to subsection (g), add an amount equal to**
8 **intangibles payments described in section 34 of this chapter**
9 **that are directly or indirectly paid, accrued, or incurred to a**
10 **related member during the taxable year to the extent the**
11 **intangibles payments are deductible in calculating federal**
12 **taxable income under the Internal Revenue Code."**

13 Page 12, delete lines 40 through 42, begin a new line block indented
14 and insert:

15 **"(4) Subject to subsection (g), add an amount equal to**
16 **intangibles payments described in section 34 of this chapter**
17 **that are directly or indirectly paid, accrued, or incurred to a**
18 **related member during the taxable year to the extent the**
19 **intangibles payments are deductible in calculating federal**
20 **taxable income under the Internal Revenue Code."**

21 Page 13, delete lines 1 through 6.

22 Page 13, delete lines 25 through 42, begin a new paragraph and
23 insert:

24 **"(g) An adjustment under subsection (a)(20), (b)(6), (c)(6),**
25 **(d)(6), or (e)(4) is not required to the extent that the amount of**
26 **the intangibles payment meets any of the following conditions:**

27 **(1) The:**

28 **(A) related member during the same taxable year directly**
29 **or indirectly paid, received, accrued, or incurred the**
30 **amount to or from a person, corporation, or other entity**
31 **that is not a related member;**

32 **(B) transaction was done for a valid business purpose; and**

33 **(C) intangibles payments are made at arm's length.**

34 **(2) The:**

35 **(A) related member receiving the intangibles payments**
36 **acquired the intangible assets for which intangibles**
37 **payments are being made from a person, corporation, or**
38 **other entity that was not a related member;**

39 **(B) transaction was done for a valid business purpose; and**

40 **(C) intangibles payments are made at arm's length.**

41 **(3) The:**

42 **(A) intangibles payments are being paid or incurred to a**
43 **related member organized under the laws of a country**

1 other than the United States; and
 2 **(B) other country has entered into a comprehensive**
 3 **income tax treaty with the United States.**

4 **(4) The:**

5 **(A) transaction giving rise to the intangibles payments**
 6 **between the taxpayer and the related member has a valid**
 7 **business purpose, as determined under rules adopted**
 8 **under IC 4-22-2 by the department; and**

9 **(B) intangibles payments are made at arm's length."**

10 Delete pages 14 through 24, begin a new paragraph and insert:

11 "SECTION 8. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE
 12 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 13 **JANUARY 1, 2004 (RETROACTIVE)]:** **Sec. 34. (a) As used in this**
 14 **article, "intangibles payment" means a payment directly**
 15 **connected to the use, maintenance, or management of:**

16 **(1) licenses;**

17 **(2) trademarks;**

18 **(3) copyrights;**

19 **(4) trade names;**

20 **(5) trade dress;**

21 **(6) service marks;**

22 **(7) mask works;**

23 **(8) trade secrets;**

24 **(9) patents; or**

25 **(10) any other similar types of intangible assets, as**
 26 **determined by the department.**

27 **(b) The term includes amounts allowable as interest deductions**
 28 **under Section 163 of the Internal Revenue Code to the extent the**
 29 **amounts are directly or indirectly for, related to, or in connection**
 30 **with the use, maintenance, or management of an intangible asset**
 31 **described in subsection (a).**

32 SECTION 9. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE AS
 33 A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY**
 34 **1, 2004 (RETROACTIVE)]:** **Sec. 35. As used in this article, "related**
 35 **member" means a person, corporation, or other entity, including**
 36 **an entity that is treated as a partnership or other pass through**
 37 **entity for purposes of federal income taxation, whether or not the**
 38 **person, corporation, or other entity is a taxpayer if one (1) or**
 39 **more of the persons, corporations , or entities directly or**
 40 **indirectly own or control a majority interest in another entity.**

41 SECTION 10. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE
 42 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 43 **JANUARY 1, 2004 (RETROACTIVE)]:** **Sec. 36. As used in this**

1 article, "majority interest" means:

2 (1) in the case of a corporation, either:

3 (A) more than fifty percent (50%) of the total combined
4 voting power of all classes of stock of the corporation; or

5 (B) more than fifty percent (50%) of the capital, profits,
6 or beneficial interest in the voting stock of the
7 corporation; and

8 (2) in the case of a partnership or other entity that is not a
9 corporation, more than fifty percent (50%) of the capital,
10 profits, or beneficial interest in the entity.

11 SECTION 11. IC 6-3-1-37 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
13 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 37. As used in this**
14 **article, "valid business purpose" means one (1) or more business**
15 **purposes, other than the avoidance or reduction of taxation, that**
16 **alone or in combination constitute the primary motivation for**
17 **some business activity or transaction that changes in a**
18 **meaningful way, apart from tax effects, the economic position of**
19 **the taxpayer."**

20 Page 25, delete lines 1 through 26.

21 Page 26, delete lines 41 through 42, begin a new line double block
22 indented and insert:

23 **"(H) Subject to subsection (f), an amount equal to**
24 **intangibles payments described in section 10.5 of this**
25 **chapter that are directly or indirectly paid, accrued, or**
26 **incurred to a related member during the taxable year to**
27 **the extent the intangibles payments are deductible in**
28 **calculating federal taxable income under the Internal**
29 **Revenue Code."**

30 Page 27, delete lines 1 through 4.

31 Page 28, line 25, delete "by adding an amount equal to:" and insert "
32 **subject to subsection (f), by adding an amount equal to intangibles**
33 **payments described in section 10.5 of this chapter that are directly**
34 **or indirectly paid, accrued, or incurred to a related member during**
35 **the taxable year to the extent the intangibles payments are**
36 **deductible in calculating federal taxable income under the**
37 **Internal Revenue Code."**

38 Page 28, delete lines 26 through 42, begin a new paragraph and
39 insert:

40 **"(f) An adjustment under subsection (a)(1)(H) or (e) is not**
41 **required to the extent that the amount of the intangibles payment**
42 **meets any of the following conditions:**

43 (1) The:

- 1 (A) related member during the same taxable year directly
- 2 or indirectly paid, received, accrued, or incurred the
- 3 amount to or from a person, corporation, or other entity
- 4 that is not a related member;
- 5 (B) transaction was done for a valid business purpose; and
- 6 (C) intangibles payments are made at arm's length.

- 7 (2) The:
- 8 (A) related member receiving the intangibles payments
- 9 acquired the intangible assets for which intangibles
- 10 payments are being made from a person, corporation, or
- 11 other entity that was not a related member;
- 12 (B) transaction was done for a valid business purpose; and
- 13 (C) intangibles payments are made at arm's length.

- 14 (3) The:
- 15 (A) intangibles payments are being paid or incurred to a
- 16 related member organized under the laws of a country
- 17 other than the United States; and
- 18 (B) other country has entered into a comprehensive
- 19 income tax treaty with the United States.

- 20 (4) The:
- 21 (A) transaction giving rise to the intangibles payments
- 22 between the taxpayer and the related member has a valid
- 23 business purpose, as determined under rules adopted
- 24 under IC 4-22-2 by the department; and
- 25 (B) intangibles payments are made at arm's length.

26 SECTION 17. IC 6-5.5-1-10.5 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 28 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 10.5. (a) "Intangibles
 29 payment" means a payment directly connected to the use,
 30 maintenance, or management of:**

- 31 (1) licenses;
- 32 (2) trademarks;
- 33 (3) copyrights;
- 34 (4) trade names;
- 35 (5) trade dress;
- 36 (6) service marks;
- 37 (7) mask works;
- 38 (8) trade secrets;
- 39 (9) patents; or
- 40 (10) any other similar types of intangible assets, as
- 41 determined by the department.

42 (b) The term includes amounts allowable as interest deductions
 43 under Section 163 of the Internal Revenue Code to the extent the

1 amounts are directly or indirectly for, related to, or in connection
 2 with the use, maintenance, or management of an intangible asset
 3 described in subsection (a).

4 SECTION 20. IC 6-5.5-1-11.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 11.5. "Majority
 7 interest" means:**

8 **(1) in the case of a corporation, either:**

9 **(A) more than fifty percent (50%) of the total combined
 10 voting power of all classes of stock of the corporation; or**

11 **(B) more than fifty percent (50%) of the capital, profits,
 12 or beneficial interest in the voting stock of the
 13 corporation; and**

14 **(2) in the case of a partnership or other entity that is not a
 15 corporation, more than fifty percent (50%) of the capital,
 16 profits, or beneficial interest in the entity.**

17 SECTION 21. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 19 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.8. "Related member"
 20 means a person, corporation, or other entity, including an entity
 21 that is treated as a partnership or other pass through entity for
 22 purposes of federal income taxation, whether or not the person,
 23 corporation, or other entity is a taxpayer if one (1) or more of the
 24 persons, corporations, or entities directly or indirectly own or
 25 control a majority interest in another entity.**

26 SECTION 22. IC 6-5.5-1-21 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 28 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 21. "Valid business
 29 purpose" means one (1) or more business purposes, other than
 30 the avoidance or reduction of taxation, that alone or in
 31 combination constitute the primary motivation for some business
 32 activity or transaction that changes in a meaningful way, apart
 33 from tax effects, the economic position of the taxpayer."**

34 Delete pages 29 through 30.

35 Page 31, delete lines 1 through 6.

36 Page 31, delete lines 31 through 32.

37 Page 31, line 33, delete "(e)" and insert "(d)".

38 Page 31, delete lines 37 through 42.

39 Page 32, delete line 1.

40 Page 32, line 2, delete "(g)" and insert "(e)".

41 Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

Representative Turner