

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WITHDRAWN	Noes _____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

1           **intangibles payments are deductible in calculating federal**  
 2           **taxable income under the Internal Revenue Code."**

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

5           **"(6) 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           **taxable income under the Internal Revenue Code."**

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

13          **"(4) 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 13, delete lines 1 through 3.

20          Page 13, delete lines 25 through 32, begin a new paragraph and  
 21          insert:

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

25           **(1) The:**

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

30           **(B) transaction was done for a valid business purpose; and**  
 31           **(C) intangibles payments are made at arm's length.**

32           **(2) The:**

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

37           **(B) transaction was done for a valid business purpose; and**  
 38           **(C) intangibles payments are made at arm's length.**

39           **(3) The:**

40           **(A) intangibles payments are being paid or incurred to a**  
 41           **related member organized under the laws of a country**  
 42           **other than the United States; and**

43           **(B) other country has entered into a comprehensive**

1 income tax treaty with the United States.

2 (4) The:

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

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

8 Page 14, delete lines 2 through 42, begin a new paragraph and insert:

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

14 (1) licenses;

15 (2) trademarks;

16 (3) copyrights;

17 (4) trade names;

18 (5) trade dress;

19 (6) service marks;

20 (7) mask works;

21 (8) trade secrets;

22 (9) patents; or

23 (10) any other similar types of intangible assets, as  
24 determined by the department.

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

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

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

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

- 1           **(A) more than fifty percent (50%) of the total combined**  
 2           **voting power of all classes of stock of the corporation; or**  
 3           **(B) more than fifty percent (50%) of the capital, profits,**  
 4           **or beneficial interest in the voting stock of the**  
 5           **corporation; and**  
 6           **(2) in the case of a partnership or any other entity that is not**  
 7           **a corporation, more than fifty percent (50%) of the capital,**  
 8           **profits, or beneficial interest in the entity.**

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

18          Delete page 15.

19          Page 16, delete lines 1 through 12.

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

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

29          Page 27, delete lines 1 through 4.

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

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

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

42                         **(1) The:**

43                                 **(A) related member during the same taxable year directly**

- 1           or indirectly paid, received, accrued, or incurred the
- 2           amount to or from a person, a corporation, or any other
- 3           entity that is not a related member;
- 4           **(B) transaction was done for a valid business purposes;**
- 5           **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, a corporation, or**
- 11           **any 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 any other entity that is not  
 15 a 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, a corporation, or any other entity, including an  
 21 entity that is treated as a partnership or other pass through entity  
 22 for purposes of federal income taxation, whether or not the  
 23 person, corporation, or other entity is a taxpayer if one (1) or  
 24 more of the persons, corporations, or entities directly or indirectly  
 25 own or 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 Renumber all SECTIONS consecutively.

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

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Representative Turner