

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WITHDRAWN	Noes _____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**

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 3.

22 Page 13, delete lines 25 through 32, 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, a corporation, or any other**
 - 31 **entity 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, a corporation, or**
 - 38 **any 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 Page 14, delete lines 2 through 42, 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, a corporation, or any other entity,**
 36 **including an entity that is treated as a partnership or other pass**
 37 **through entity for purposes of federal income taxation, whether**
 38 **or not the person, corporation, or other entity is a taxpayer if one**
 39 **(1) or 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 any other entity that is not
9 a 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 Delete page 15.

21 Page 16, delete lines 1 through 12.

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

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

31 Page 27, delete lines 1 through 4.

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

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

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

- 1 **(1) The:**
2 **(A) related member during the same taxable year directly**
3 **or indirectly paid, received, accrued, or incurred the**
4 **amount to or from a person, a corporation, or any other**
5 **entity that is not a related member;**
6 **(B) transaction was done for a valid business purposes;**
7 **and**
8 **(C) intangibles payments are made at arm's length.**
- 9 **(2) The:**
10 **(A) related member receiving the intangibles payments**
11 **acquired the intangible assets for which intangibles**
12 **payments are being made from a person, a corporation, or**
13 **any other entity that was not a related member;**
14 **(B) transaction was done for a valid business purpose; and**
15 **(C) intangibles payments are made at arm's length.**
- 16 **(3) The:**
17 **(A) intangibles payments are being paid or incurred to a**
18 **related member organized under the laws of a country**
19 **other than the United States; and**
20 **(B) other country has entered into a comprehensive**
21 **income tax treaty with the United States.**
- 22 **(4) The:**
23 **(A) transaction giving rise to the intangibles payments**
24 **between the taxpayer and the related member has a valid**
25 **business purpose, as determined under rules adopted**
26 **under IC 4-22-2 by the department; and**
27 **(B) intangibles payments are made at arm's length.**
- 28 SECTION 17. IC 6-5.5-1-10.5 IS ADDED TO THE INDIANA
29 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
30 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 10.5. (a) "Intangibles**
31 **payment" means a payment directly connected to the use,**
32 **maintenance, or management of:**
- 33 **(1) licenses;**
34 **(2) trademarks;**
35 **(3) copyrights;**
36 **(4) trade names;**
37 **(5) trade dress;**
38 **(6) service marks;**
39 **(7) mask works;**
40 **(8) trade secrets;**
41 **(9) patents; or**
42 **(10) any other similar types of intangible assets, as**
43 **determined by the department.**

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

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

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

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

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

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

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

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

36 Delete pages 29 through 30.

37 Page 31, delete lines 1 through 6.

38 Renummer all SECTIONS consecutively.

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

Representative Frenz