

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WITHDRAWN	Noes _____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. (a) As used in this article,
35 "related member" means a person, a corporation, or any other
36 entity, including an entity that is treated as a partnership or other
37 pass through entity for purposes of federal income taxation, if the
38 taxpayer directly or indirectly owns or controls a majority interest
39 in another entity.

40 (b) The term applies to a person, corporation, or other entity
41 irrespective of whether the person, corporation, or other entity is
42 a taxpayer under IC 6-3-1-15.

43 SECTION 10. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE

1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 36. As used in this
3 article, "majority interest" means:**

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

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

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

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

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

22 Delete page 15.

23 Page 16, delete lines 1 through 12.

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

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

33 Page 27, delete lines 1 through 4.

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

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

43 **"(f) An adjustment under subsection (a)(1)(H) or (e) is not**

1 required to the extent that the amount of the intangibles payment
2 meets any of the following conditions:

3 (1) The:

4 (A) related member during the same taxable year directly
5 or indirectly paid, received, accrued, or incurred the
6 amount to or from a person, a corporation, or any other
7 entity that is not a related member;

8 (B) transaction was done for a valid business purposes;
9 and

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

11 (2) The:

12 (A) related member receiving the intangibles payments
13 acquired the intangible assets for which intangibles
14 payments are being made from a person, a corporation, or
15 any other entity that was not a related member;

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

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

18 (3) The:

19 (A) intangibles payments are being paid or incurred to a
20 related member organized under the laws of a country
21 other than the United States; and

22 (B) other country has entered into a comprehensive
23 income tax treaty with the United States.

24 (4) The:

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

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

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

35 (1) licenses;

36 (2) trademarks;

37 (3) copyrights;

38 (4) trade names;

39 (5) trade dress;

40 (6) service marks;

41 (7) mask works;

42 (8) trade secrets;

43 (9) patents; or

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

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

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

12 **(1) in the case of a corporation, either:**
 13 **(A) more than fifty percent (50%) of the total combined**
 14 **voting power of all classes of stock of the corporation; or**
 15 **(B) more than fifty percent (50%) of the capital, profits,**
 16 **or beneficial interest in the voting stock of the**
 17 **corporation; and**

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

21 SECTION 21. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA
 22 CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 23 **JANUARY 1, 2004 (RETROACTIVE)]: Sec. 12.8. (a) "Related**
 24 **member" means a person, a corporation, or any other entity,**
 25 **including an entity that is treated as a partnership or other pass**
 26 **through entity for purposes of federal income taxation, if the**
 27 **taxpayer directly or indirectly owns or controls a majority interest**
 28 **in another entity.**

29 **(b) The term applies to a person, corporation, or other entity**
 30 **irrespective of whether the person, corporation, or other entity is**
 31 **a taxpayer under this article.**

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

40 Delete pages 29 through 30.

41 Page 31, delete lines 1 through 6.

42 Re-number all SECTIONS consecutively.

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

Representative Frenz