

1 A bill to be entitled
 2 An act relating to the corporate income tax; amending s.
 3 220.13, F.S.; providing an additional criterion to the
 4 definition of the term "adjusted federal income"; imposing
 5 restrictions on the deductibility of certain intangible
 6 expenses, interest expenses, and management fees;
 7 providing definitions; requiring corporations to add to
 8 taxable income certain expenses and fees; providing
 9 exceptions; providing for nonapplication of such
 10 exceptions under certain circumstances; providing
 11 additional requirements and limitations; providing
 12 construction; specifying required information to be
 13 provided to the Department of Revenue; specifying a
 14 criterion for negligence; authorizing the department to
 15 adopt rules; providing application; providing an effective
 16 date.

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 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Subsection (3) is added to section 220.13,
 21 Florida Statutes, to read:

22 220.13 "Adjusted federal income" defined.—

23 (3) The restrictions imposed by this subsection apply to
 24 the deductibility of intangible expenses, interest expenses, and
 25 management fees paid to or accrued or incurred with a related
 26 entity.

27 (a) As used in this subsection, the term:

28 1. "Intangible expenses" means the following amounts to

29 the extent such amounts are allowed as deductions in determining
30 federal taxable income under the Internal Revenue Code before
31 the application of any net operating loss deduction and any
32 special deductions for the taxable year:

33 a. Expenses, losses, and costs directly or indirectly for,
34 related to, or in association with the acquisition, use,
35 maintenance, management, ownership, sale, exchange, or any other
36 disposition of intangible property;

37 b. Royalty, patent, technical, trademark, and copyright
38 fees;

39 c. Licensing fees; or

40 d. Other substantially similar expenses and costs,
41 including, but not limited to, interest and losses from
42 factoring transactions.

43 2. "Intangible property" means patents, patent
44 applications, trade names, trademarks, service marks,
45 copyrights, trade secrets, and substantially similar types of
46 intangible assets.

47 3. "Interest expenses" means amounts that are allowed as
48 deductions under s. 163 of the Internal Revenue Code in
49 determining federal taxable income before the application of any
50 net operating loss deductions and special deductions for the
51 taxable year.

52 4. "Management fees" means expenses and costs paid for
53 services, including, but not limited to, management overhead,
54 management supervision, accounts receivable and payable,
55 employee benefit plans, insurance, legal, payroll, data
56 processing, purchasing, tax, financial and securities, billing,

57 accounting, reporting, and compliance services or similar
58 services, only to the extent that the amounts are allowed as a
59 deduction, cost, or expense in determining taxable net income
60 under the Internal Revenue Code before the application of any
61 net operating loss deduction and special deductions for the
62 taxable year.

63 5. "Recipient" means a related entity to which is paid an
64 item of income that corresponds to an intangible expense,
65 interest expense, or management fee.

66 6. "Related entity" means any artificial entity that would
67 be a member of a taxpayer's affiliated group under s. 1504 of
68 the Internal Revenue Code during all or any portion of the
69 taxable year using an ownership percentage of 50 percent instead
70 of 80 percent. A related entity includes any entity, other than
71 a natural person, that would be included in the affiliated group
72 based upon a 50-percent ownership percentage if the entity were
73 organized as a corporation.

74 (b) Except as provided in paragraph (c), in determining a
75 corporation's adjusted federal income under this section and s.
76 220.131, a corporation subject to the tax imposed by this
77 chapter shall add to its taxable income any intangible expenses,
78 interest expenses, and management fees paid to or accrued or
79 incurred directly or indirectly with one or more related
80 entities. For income received from a pass-through entity or a
81 disregarded entity, the corporation is deemed to have received
82 its share of both the income and expenses of the pass-through
83 entity or disregarded entity for purposes of this subsection.

84 (c) Except as provided in paragraph (d), the addition of

85 intangible expenses, interest expenses, and management fees
 86 otherwise required in a taxable year under this subsection for a
 87 specific related entity transaction is not required if:

88 1. The taxpayer and the recipient are both included in the
 89 same Florida consolidated tax return filed under s. 220.131 for
 90 the taxable year;

91 2. The taxpayer and the executive director or his or her
 92 designee agree in writing to alternative computations or
 93 adjustments. The executive director or his or her designee may
 94 consider approval of such agreement only if the taxpayer has
 95 clearly established to the satisfaction of the executive
 96 director or his or her designee that the addition is
 97 unreasonable and that the proposed alternative method of
 98 determining the measure of the tax accurately reflects the
 99 activity, business, income, and capital of the taxpayers within
 100 this state. The agreement must be signed by the executive
 101 director or his or her designee and may not exceed 4 years;

102 3. The taxpayer makes a disclosure on its return and
 103 establishes by clear and convincing evidence that:

104 a. The recipient was subject to an income tax or franchise
 105 tax measured in whole or in part by net income in its state or
 106 country of commercial domicile or in the state of commercial
 107 domicile in which an intangible property is required by contract
 108 to be held. If the recipient receives a credit, exemption, or
 109 exclusion in excess of 75 percent of such income, or otherwise
 110 does not pay an income tax or franchise tax measured by net
 111 income to the recipient's state of commercial domicile or the
 112 state in which the intangible property is required by contract

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113 to be held on its receipt of intangible income, management fee
114 income, or interest income, the recipient does not qualify for
115 this exception. If the recipient is a foreign corporation, the
116 foreign nation must have in force a comprehensive income tax
117 treaty with the United States;

118 b. The tax base for such tax included the intangible
119 expense, management fee, or interest expense paid, accrued, or
120 incurred by the taxpayer;

121 c. The aggregate effective tax rate applied is no less
122 than 5.5 percent;

123 d. The transaction did not have avoidance of this state's
124 tax as a principle purpose;

125 e. The recipient regularly engages in the same business
126 with third parties; and

127 f. The transaction was made at a commercially reasonable
128 rate and at arm's length terms similar to those with third
129 parties; or

130 4. The taxpayer makes a disclosure on its return and
131 establishes by clear and convincing evidence that:

132 a. The related entity, during the same taxable year,
133 directly or indirectly incurred and paid the amount of the
134 intangible expense, interest expense, and management fee to a
135 person or entity that is not a related entity;

136 b. The transaction was executed for a valid business
137 purpose;

138 c. The payments are limited to a reimbursement of the
139 amounts paid to a person or entity that is not a related entity;
140 and

141 d. The unrelated person or entity regularly engages in the
142 same business with third parties on a substantial basis.

143 (d) The exceptions described in subparagraphs (c)3. and 4.
144 shall not apply:

145 1. To interest paid by a taxpayer in connection with a
146 debt incurred to acquire the taxpayer's or a related entity's
147 assets or stock in a transaction referenced in s. 368 of the
148 Internal Revenue Code. For purposes of this subparagraph,
149 acquisition interest paid by a taxpayer to a person or entity
150 that is not a related entity shall be treated as if paid to a
151 related entity;

152 2. To intangible property acquired directly or indirectly
153 from the taxpayer or from a related entity;

154 3. When the related entity is primarily engaged in
155 managing, acquiring, or maintaining intangible property or
156 related party financing and a primary purpose of the transaction
157 was the avoidance of tax by this state; or

158 4. When the taxpayer files with the related entity or the
159 related entity files with another related entity an income tax
160 return or report when such return or report is due because of
161 the imposition of a tax on or measured by income, or when such
162 income tax return or report results in the elimination of the
163 tax effects from transactions directly or indirectly between the
164 taxpayer and the related entity.

165 (e) To the extent a taxpayer is required to make an
166 adjustment under paragraphs (b) and (c) for a specific related
167 entity transaction, the corresponding related entity shall make
168 a corresponding subtraction to its taxable income, if subject to

169 tax in this state.

170 (f) The amount of a taxpayer's net operating loss
171 carryover from tax years ending prior to December 31, 2010, to a
172 tax year ending on or after December 31, 2010, shall be adjusted
173 to account for adding back any intangible expenses, interest
174 expenses, and management fees under this subsection. Under no
175 circumstance may this recalculation increase the amount of a net
176 operating loss carryover.

177 (g) Nothing in this subsection requires a taxpayer to add
178 to its Florida taxable income more than once any amount of
179 interest expenses, intangible expenses, and management fees that
180 the taxpayer pays to or accrues or incurs with a related entity.

181 (h) Nothing in this subsection shall be construed to allow
182 any item to be subtracted from adjusted federal income more than
183 once or to allow a subtraction for any item that is excluded
184 from income or to allow any item to be included in the adjusted
185 federal income of more than one taxpayer.

186 (i) Nothing in this subsection shall be construed to limit
187 or negate the executive director's or his or her designee's
188 authority to make adjustments under s. 220.131(2), s. 220.152,
189 or s. 220.44.

190 (j) Each taxpayer shall provide the following information
191 to the department with its tax return regarding each related
192 entity transaction:

- 193 1. The name of the recipient.
- 194 2. The state or country of domicile of the recipient.
- 195 3. The amount paid to the recipient.
- 196 4. A complete description of the payment made to the

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197 recipient.

198 (k) A failure to add back any amount paid directly or
199 indirectly to a related party or a failure to provide complete
200 information with the tax return shall be evidence of negligence
201 as described in s. 220.803(1).

202 Section 2. The Department of Revenue may adopt rules and
203 forms necessary to administer the amendment to section 220.13,
204 Florida Statutes, made by this act, including, but not limited
205 to, forms and rules for reporting intercompany transactions.

206 Section 3. This act shall take effect July 1, 2010, and
207 shall apply to tax years ending on or after December 31, 2010.