



Notice #17-27

November 2017

Intangible Expense Deduction

Requirements for Claiming an Intangible Expense Deduction Have Changed

Effective for tax years beginning on or after July 1, 2016, the requirements for claiming an intangible expense deduction changed as a result of Public Chapter 514 (2015), known as the Revenue Modernization Act (RMA).

The RMA defined "substantial nexus," as any direct or indirect connection of the taxpayer to this state, such that the taxpayer can be required under the United States Constitution to remit tax. This definition provides a nonexclusive list of ways a taxpayer can have nexus with Tennessee, including a bright-line presence test establishing nexus if a taxpayer's Tennessee receipts exceed the lesser of \$500,000 or 25% of its total everywhere receipts.

Most affiliates to whom an intangible expense is paid have substantial nexus with Tennessee, and they are required to register and file franchise and excise tax returns. Since both the payer and the recipient of the intangible expense are subject to the franchise and excise tax, the taxpayer paying the expense is allowed the intangible expense deduction if it files the required disclosure form.

Disclosed Intangible Expenses Paid to an Affiliate May be Deducted When Certain Requirements Are Met

Under the amended law, a taxpayer that pays an intangible expense to an affiliated company may deduct that expense from its excise tax base if the intangible expense has been disclosed and the affiliate:

- is registered and paying Tennessee excise tax,
- is located in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States, or
- is otherwise not required to be registered for or pay Tennessee excise tax.

An Intangible Expense Disclosure Form Must be Filed When Intangible Expenses Are Paid to an Affiliate

All companies are required to add-back, on their excise tax return, any intangible expenses paid to an affiliated company. This add-back requirement, effective for tax periods beginning on or after 2004, has not changed. In addition, the expenses must be disclosed in Part 1 of the new Form IE – Intangible Expense Disclosure. Intangible expenses paid to an affiliate that qualify for deduction may be claimed by completing Part 2 of Form IE – Intangible Expense Disclosure and deducting the expense on the excise return. Form IE must be filed with the related FAE170 or FAE174 return. The [Intangible Expense Disclosure form](#) is available on the Department's website.

A Negligence Penalty Applies for Failing to Comply With Intangible Expense Disclosure or Add-back Requirements

A taxpayer that takes the intangible expense deduction without filing Form IE, or who fails to add the expense to net earnings (losses) on its originally filed return, will be subject to the negligence

penalty. The penalty is the greater of \$10,000 or 50% of any adjustment to the initially filed return.

Forms IE-N and IE-A No Longer Used

For tax years beginning on or after July 1, 2016, taxpayers will no longer use Forms IE-N and IE-A. The RMA repealed the application process, rendering Form IE-A obsolete.

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.

References

Tenn. Code Ann. § 67-1-804(b)(2); Tenn. Code Ann. § 67-4-2004(24), (49); Tenn. Code Ann. § 67-4-2006(b)(1)(K); Tenn. Code Ann. § 67-4-2006(b)(2)(N); Tenn. Code Ann. § 67-4-2006(d)