



BDO Seidman, LLP
Accountants and Consultants

Subject:

Georgia Anti-Passive Investment Company Legislation

State Tax Alert

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On April 6, 2005, Georgia enacted legislation requiring the addback of certain interest and intangible expenses paid to related members. The types of expenses affected include, but are not limited to, royalty payments for use of patents, trade names, trademarks, copyrights and trade secrets, and lease payments for intangible property. The move adds the State of Georgia to a growing list of states that either plan to or currently disallow deductions of similar expenses and costs.

Details

For purposes of computing taxable net income in Georgia, a taxpayer now must add back interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred in connection with certain transactions with one or more related parties. The expenses are added back to net income prior to being apportioned.

Pursuant to the legislation the following terms are defined:

- **Interest Expense and Costs** – include, but are not limited to, amounts directly or indirectly allowed as deductions under IRC § 163 to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property.
- **Intangible Expense and Costs** – include expenses, losses, and costs directly or indirectly for, related to, or in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property, to the extent such amounts are allowed as deductions or costs in determining taxable

income before net operating loss deduction and special deductions for the taxable year. The term includes, but is not limited to:

- Royalty, patent, technical, and copyright fees;
- Licensing fees; and
- Other similar expenses and costs

The intangible expense and related interest expense addback will be effective for tax years beginning on or after January 1, 2006. Taxpayers that fail to include the additional income will be subject to a penalty of 10 percent of the additional tax due under the addback requirement.

Note that certain exceptions apply to the new "addback" provisions. For example, arm's-length interest or intangible expenses paid to a related party domiciled in a foreign nation, are not required to be added back to income. An exception also exists for interest or intangible expenses paid to an affiliate which is subject to tax in Georgia or another jurisdiction, provided certain requirements are met.

Recommended Action:

Companies that have existing Passive Investment Company or similar "Holding Company" structures should review their tax posture since they can no longer take benefit for Georgia tax purposes for tax years beginning on or after January 1, 2006.

How BDO Seidman Can Help:

BDO Seidman can facilitate the review of your current Delaware Holding Company and assist you with addressing the tax implications of recent anti-PIC tax legislation in Georgia, as well as for other states with similar legislations.

Clients who want to know more about the current status of Anti-PIC legislations in Georgia and other states are invited to attend BDO Seidman's WebEx seminar that will be held on Wednesday, June 1, 2005.

**FOR MORE INFORMATION
PLEASE CONTACT:**

Glenn McCoy,
National Partner-in-Charge
State & Local Tax Services
212-885-8000
gmccoy@bdo.com

Nick Nesi, Partner,
State & Local Tax Services
(212) 885-8420
nnesi@bdo.com

Robert Zonenshein,
Senior Manager, State & Local
Tax Services
212-885-8000
rzonenshein@bdo.com

Jeff Emge, Manager,
State & Local Tax Services
212-885-8000
jemge@bdo.com

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