

Taxable Year	Taxpayer Name	Account No./FEIN
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**Form IE - Intangible Expense Disclosure**

This form must be completed if intangible expenses are paid to an affiliate, regardless of whether those expenses are deducted in arriving at the income (loss) subject to excise tax. File this form with tax return FAE170 or FAE174.

**Part 1 - Intangible Expense Add-Back**

If such expenses are paid to more than one affiliate, the following information must be provided for each affiliate on separate copies of Form IE.

Name of Affiliate	Affiliate Account Number	Affiliate FEIN
Federal Form Line Number on Which Expense Deducted	Account Title of Expense	

**Part 2 - Intangible Expense Deduction** (Enter all that apply)

1. Paid, accrued, or incurred to an affiliate registered for and paying Tennessee excise tax..... (1) \_\_\_\_\_

2. Paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States ..... (2) \_\_\_\_\_

Foreign nation \_\_\_\_\_

3. Paid, accrued, or incurred to an affiliate not required to register for or to pay excise tax..... (3) \_\_\_\_\_

By entering an amount on this line, you certify that the affiliate does not have substantial nexus in Tennessee, or is otherwise exempt from Tennessee excise tax. Indicate the applicable exemption or other reason the affiliate is not required to register for or to pay excise tax.

\_\_\_\_\_

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\_\_\_\_\_

4. Total intangible expense deduction (add Lines 1 through 3) ..... (4) \_\_\_\_\_

## **Instructions: Intangible Expense Disclosure**

### **When To File Form IE**

Taxpayers that paid, accrued, or incurred intangible expenses in connection with a transaction with an affiliate, regardless of whether those expenses are deducted in arriving at the income (loss) subject to excise tax, must file Form IE with their franchise and excise tax return (FAE170 or FAE174). If such expenses are paid to more than one affiliate, a separate Form IE should be completed for each affiliate. Form IE must be submitted electronically with the electronic submission of Form FAE170 or FAE174 each year that it applies.

### **Definitions**

"Intangible expense" – an expense related to, or in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income on a separate entity basis.

"Intangible expense" also means interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property.

"Intangible property" – patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, formulas, designs, patterns, processes, formats, and similar types of intangible assets.

"Substantial nexus in this state" – any direct or indirect connection of the taxpayer to this state such that the taxpayer can be required under the Constitution of the United States to remit the franchise and excise tax. Such connection includes, but is not limited to, the following:

- (i) The taxpayer is organized or commercially domiciled in this state;
- (ii) The taxpayer owns or uses its capital in this state;
- (iii) The taxpayer has systematic and continuous business activity in this state that has produced gross receipts attributable to customers in this state;
- (iv) The taxpayer licenses intangible property for use by another party in this state and derives income from that use of intangible property in this state; or
- (v) The taxpayer has bright-line presence in this state. A person has bright-line presence in this state for a tax period if any of the following applies:
  - (a) The taxpayer's total receipts in this state during the tax period, as determined under Tenn. Code Ann. § 67-4-2012, exceed the lesser of \$500,000 or 25% of the taxpayer's total receipts everywhere during the tax period;
  - (b) The average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, as determined under Tenn. Code Ann. § 67-4- 2012, exceeds the lesser of \$50,000 or 25% of the average value of all the taxpayer's total real and tangible personal property; or
  - (c) The total amount paid in this state during the tax period by the taxpayer for compensation, determined under Tenn. Code Ann. § 67-4-2012, exceeds the lesser of \$50,000 or 25% of the total compensation paid by the taxpayer.

### **Part 1 - Intangible Expense Add-Back**

Tenn. Code Ann. § 67-4-2006(b)(1)(K) requires that all “intangible expenses” paid to an “affiliated business entity” be added to a taxpayer’s net earnings or losses. This add-back is reported on Schedule J of the franchise and excise tax return and not on this form. Failure to make this add-back on the initially-filed return will subject the taxpayer to a negligence penalty in accordance with Tenn. Code Ann. § 67-1-804(b)(2).

### **Part 2 - Intangible Expense Deduction**

Tenn. Code Ann. § 67-4-2006(b)(2)(N) permits intangible expenses to be deducted from the excise tax base in certain circumstances.

An intangible expense paid, accrued, or incurred in connection with a transaction with one or more affiliates that has been disclosed on this form may be deducted if (i) the affiliate to whom the expense has been paid, accrued, or incurred is registered for and paying the excise tax, or (ii) the expense was paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States or to an affiliate that is otherwise not required to be registered for or to pay the excise tax.

Enter the applicable amount(s) in the spaces provided for the affiliate listed in Part 1. If an amount is entered on Line 2, enter the name of the foreign nation in the space provided. Complete Line 3 if the affiliate is not required to register for or pay the excise tax. This line should only be completed when the affiliate is exempt under the provisions of Tenn. Code Ann. § 67-4-2008 or does not have “substantial nexus in this state” as defined above.

### **Instructions for Deducting Intangible Expenses Reported on This Form**

To ensure that the deduction is correctly taken, the taxpayer should:

- Complete this form each year it has intangible expenses paid, accrued, or incurred in connection with a transaction with an affiliate
- Add back the intangible expense on FAE170, Schedule J, Line 2 or FAE174, Schedule J, Line 5
- Only include intangible expense deductions on Part 2 that are specifically allowed by statute
- Take the intangible expense deduction computed on Form IE on FAE170, Schedule J, Line 22 or FAE174, Schedule J, Line 26

### **Failure To File Form IE**

The Department will disallow the deduction if a taxpayer deducts intangible expenses paid to an affiliate from net earnings or losses but does not file Form IE with the return. The taxpayer also may be subject to an assessment of excise tax, interest, and penalty, if applicable. The taxpayer may file Form IE with an amended return to claim the deduction. However, if the initially-filed return did not report the intangible expense add-back on Schedule J, Line 2, the taxpayer will be subject to a negligence penalty as set forth in Tenn. Code Ann. § 67-1-804(b)(2).