



Tennessee Department of Revenue
Intangible Expense – Notice of Deduction
Form IE-N

File this form
with tax return
(FAE 170 or FAE 174)
or email to
Intangible.Expense@tn.gov

Taxable Year	Taxpayer Name	Account No/FEIN/SSN
Federal Form No.	Expense Deducted on Federal Form Line No.	Type of Expense
Name of Affiliate		FEIN

This form should only be filed in instances where the intangible expenses paid to the affiliate come within the exceptions or – safe harbors – found at Tenn. Code Ann. § 67-4-2006(b)(2)(N)(i)(a)-(c). If such expenses are paid to more than one affiliate, a separate notice should be completed for each affiliate.

Intangible expense, or portion thereof, was: (Check all that apply)

- ☐ (a) 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;

Foreign nation _____

Line 1: Total "Foreign Nation" Deduction _____

- ☐ (b) Paid, accrued, or incurred to an affiliate when the affiliate during the same taxable year, has directly or indirectly paid, accrued or incurred such portion to an entity that is not an affiliate;

Name of non-affiliate _____ FEIN _____

Line 2: Total "Non-Affiliate" Deduction _____

- ☐ (c) Paid, accrued, or incurred to an affiliate doing business in, or deriving income from, a state that imposes a tax on or measured by net income and, under that state's law, the affiliate is subject to an income tax in that state. (see instructions for details;

	<u>State</u>	<u>Tax Type / Form Name</u>	<u>Amount</u>	<u>Ratio</u>	<u>Apportioned Amount</u>
A	_____	_____	_____	_____	_____
B	_____	_____	_____	_____	_____
C	_____	_____	_____	_____	_____
D	_____	_____	_____	_____	_____

Line 3: Total "Tax Paid" Deduction _____
(Sum Lines A-D, "Apportioned Amount" column)

Line 4: Total Intangible Expense Deduction within Safe Harbors (Sum lines 1-3) _____

POWER OF ATTORNEY Check YES if this taxpayer's signature certifies that this tax preparer has the authority to execute this form on behalf of the taxpayer and is authorized to receive and inspect confidential tax information and to perform any and all acts relating to respective tax matters. <input type="checkbox"/> YES	I certify, under penalty of perjury, that the information provided in and with this form is true and correct to the best of my knowledge and understanding.		
	Signature of Taxpayer, Officer or Representative	Title	Date
	Tax Preparer's Signature	Preparer's PTIN	Date

INSTRUCTIONS for FORM IE-N
Intangible Expense – Notice of Deduction

When to file Form IE-N

Form IE-N is a notice that should only be filed in instances where a taxpayer is deducting intangible expenses paid to an affiliate that come within the exceptions – or “safe harbors” – found at Tenn. Code Ann. § 67-4-2006(b)(2)(N)(i)(a)-(c). When one of those three exceptions or safe harbors applies, a taxpayer should deduct such expenses on its franchise, excise tax return, complete this form, and file it with the return. **Taxpayers filing the franchise and excise tax return (FAE 170) electronically may file this form (Form IE-N) by email to Intangible.Expense@tn.gov.**

Form IE-N should be completed each year the taxpayer has intangible expenses paid to an affiliate that fall within the exceptions listed below and are being deducted from net earnings or losses. If such expenses are paid to more than one affiliate, a separate Form IE-N should be completed for each affiliate.

Definitions

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

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 on Schedule J of the franchise and excise tax return. The intangible expenses may be deducted from net earnings or losses on the same tax return under certain circumstances. 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).

Exceptions or “Safe Harbors” - Three Types of Intangible Expenses Paid to an Affiliate are Allowed, if reported

Public Chapter 842, passed on April 27, 2012, amended Tenn. Code Ann. § 67-4-2006 to allow specific types of intangible expenses to be deducted from the excise tax base. The amendment to Tenn. Code Ann. § 67-4-2006(b)(2)(N)(i)(a)-(c) provides for the deduction of intangible expenses paid to affiliated entities when the intangible expenses come within one of the following safe harbors:

- a) the affiliate is in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States;
- b) the affiliate, during the same tax year, has directly or indirectly paid such portion to an entity that is not an affiliate, or
- c) the affiliate is subject to a state’s income tax and computes the appropriate portion using the allocation or apportionment rules of that state. (This **does not apply** if the taxpayer and the affiliate file or are included in a ***combined*** income tax report or return, a ***consolidated*** income tax report or return, or any other report or return of net income that includes the taxpayer and the affiliate and where such return or report results in the affiliate’s intangible income being offset or matched by the taxpayer’s deduction in that state’s report or return.)

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 falling within the safe harbors and file it with the return (or email);
- Only include intangible expense deductions that fall within the safe harbors;
- Add back the intangible expense on Schedule J, line 2, of the return;
- Take the intangible expense deduction computed on Form IE-N, Line 4, on Schedule J, Line 25A, of the return;
- Check the box on the Sch. J, Line 25A, deduction line, to indicate the deduction is based on Form IE-N – **Failure to check the box on Schedule J will prevent the deduction amount from being processed;**
- In computing the “Non-Affiliate” deduction, report and deduct only the amount of intangible expenses paid to its affiliate that are then paid to a non-affiliate; and
- In computing the “Tax Paid” deduction, list the type of tax paid by the affiliate and the applicable apportionment ratio where requested on the form. **DO NOT** include states under whose laws the taxpayer and the affiliate file or are included in a combined income tax report or return, a consolidated income tax report or return, or any other report or return of net income that includes the taxpayer and the affiliate and where such return or report results in the affiliate’s intangible income being offset or matched by the taxpayer’s deduction in that state’s report or return. If there are multiple affiliates or additional states, please attach supplemental forms.

Failure to file Form IE-N

Taxpayers failing to file Form IE-N with the return (or by email) and deducting intangible expenses paid to an affiliate from net earnings or losses will result in the Department's disallowance of the deduction and the taxpayer may be subject to an assessment of excise tax, interest, and penalty, if applicable. The taxpayer may file Form IE-N with an amended return, or send it directly to Intangible.Expense@tn.gov 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).

When to File Form IE-A—Intangible Expense - Application for Approval to Deduct

Taxpayers applying to deduct an intangible expense from net earnings or losses that does not qualify for one of the three safe harbors must complete the “Intangible Expense - Application for Approval to Deduct,” Form IE-A. Please review the Instructions on Form IE-A for the details of that process. If a taxpayer has some intangible expenses that fall within the safe harbors and others that do not, the taxpayer will be required to complete both this form (with the return or by email) and Form IE-A (separate from and prior to the filing of the return), including the relevant expenses on each form.