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State & Local Tax Advisor

Provided by the National Tax Office

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Alabama

Guidance Provided on IRC §965 Repatriation Income

Alabama provides guidance on the state income tax treatment of IRC §965 repatriation income for:

- corporations;
- partnerships;
- S corporations; and
- individuals.

The Department of Revenue gives the following instructions for reporting items of income/expense related to IRC §965.

Corporations

Federal reporting: For federal purposes, corporations must report items of income/expense related to IRC §965 on the IRC 965 Transition Tax Statement, rather than on Form 1120. Also, they must remit federal tax related to IRC §965 separately from their normal income tax. However, the items of income/expense are still considered a component of federal taxable income.

Alabama reporting: For Alabama purposes, on the Schedule A (Form 20C), corporations should report:

- IRC §965 income on line 9 (other additions); and
- IRC §965 expense on line 23 or 24 (other deductions).

Alabama does not require a separate payment for tax associated with IRC §965 income. Corporations must compute the tax associated with IRC §965 income along with any other Alabama income tax due.

Offsetting deduction: Some corporations may offset their IRC §965 income (less related deductions) with a dividends received deduction. This deduction is available when a corporation reporting a deemed dividend owns more than 20% of the controlled foreign corporation from which it received the deemed dividend. The corporation may claim the deduction on Schedule A (Form 20C), line 18. The corporation must attach a statement to its return with the following information regarding the controlled foreign corporation:

- name;
- taxpayer ID; and
- ownership interest.

***Documentation*:** Alabama requires corporations to provide with their Form 20C either:

- a copy of the IRC 965 Transition Tax Statement; or
- a statement describing the nature and source of the IRC §965 income/expense.

Partnerships

For partnerships, Alabama reporting requirements for IRC §965 income/expense mirror the federal requirements. On the Schedule K-1 (Form 65), partnerships should report:

- IRC §965 income on line 11, Other Income; and
- IRC §965 expense on line 15, Other Deductions.

S Corporations

Alabama S corporations are not subject to the provisions of IRC §965 when they are direct shareholders of foreign corporations. The taxable income of an Alabama S corporation is determined in the same manner as for an individual.

Individuals

Alabama individuals are not subject to the provisions of IRC §965 as direct shareholders of foreign corporations. However, they must report any IRC §965 income that flows through to them from an interest in a partnership. This may occur if the partnership directly owned an interest in a foreign corporation subject to the IRC §965 provisions.

An individual's taxable income on federal Form 1040 may differ from that on Alabama Form 40. The individual may receive IRC §965 income that is reported for federal purposes, but not required to be reported for Alabama purposes. In that case, the individual should report the amount and source of that income on Part IV, line 5, of Form 40. Otherwise, the individual should report the amount and source of items of IRC §965 income that flow through from an interest in a partnership on Page 2, Part I, line 8, of Form 40.

Notice: IRC Section 965 - Guidance for Corporate Filers, Partnerships, S Corporations, and Individual Taxpayers, April 27, 2018

Arizona

Repatriation Income Adjustment Required for Fiduciary Return Filers

Trusts or estates required to file federal Form 1041 will need to adjust their 2017 Arizona return if they:

- had income that was not distributed to beneficiaries; and
- the income was IRC §965 repatriation income for tax year 2017.

They must include the net IRC §965 amount on line B3 "other additions to federal taxable income" on Arizona Form 141AZ. They can determine the net IRC §965 amount by subtracting line 3 from line 1 of the IRC Transition Tax Statement filed with federal Form 1041.

Those who have already filed Form 141AZ for 2017 without making the adjustment should:

- file a corrected Arizona Form 141AZ; and
- check the box indicating that they are filing an amended return.

Notice, Arizona Department of Revenue, April 19, 2018

California

Return Adjustments Required for IRC Sec. 965 Amounts

Taxpayers that reported IRC Sec. 965 amounts on their 2017 federal return must adjust their 2017 California return. Taxpayers who have already filed a 2017 California return and included IRC Sec. 965 amounts should file an amended return to remove those amounts. The Franchise Tax Board (FTB) has issued guidance on the required state adjustments.

Federal Law

The Tax Cuts and Jobs Act of 2017 (P.L. 115-97) imposes a federal transition tax on untaxed earnings and profits of certain foreign corporation. IRC Sec. 965 requires taxpayers to pay a tax as if those earnings and profits had been repatriated to the United States. A deduction reduces the tax rate on those earnings. Taxpayers must include a transition tax statement with their federal return. This statement is separate from the federal income tax return.

California Adjustments

California does not conform to IRC Sec. 965. Taxpayers should not include IRC Sec. 965 amounts on their 2017 California return. If a taxpayer's California return uses federal numbers, the taxpayer may have to adjust the return. Taxpayers that reported IRC Sec. 965 amounts on their federal return should write "IRC 965" on the top of their California return. Taxpayers can make adjustments on the following California form schedules:

- Schedule CA (540), California Adjustments – Residents, Line 21f, Other Income – Column B – Subtractions;
- Schedule CA (540NR), California Adjustments - Nonresidents and PartYear Residents, Line 21f, Other Income – Column B – Subtractions;
- Schedule K (565), Partners' Shares of Income, Deductions, Credits, etc., Line 11b, Total Other Income – Column (c) California Adjustments, and Line 13e, Other Deductions – Column (c) California Adjustments;

- Schedule K (568), Members' Shares of Income, Deductions, Credits, etc., Line 11b, Total Other Income – Column (c) California Adjustments, and Line 13e, Other Deductions – Column (c) California Adjustments; and
- Schedule K (100S), S Corporation Shareholder's Shares of Income, Deductions, Credits, etc., Line 10b, Other Income (loss) – Column (c) California Adjustments, and Line 12e, Other Deductions – Column (c) California Adjustments.

Taxpayers should not include federal transition tax statement amounts on these forms or related schedules:

- Form 541, California Fiduciary Income Tax Return;
- Form 100, California Corporation Franchise or Income Tax Return;
- Form 100W, California Corporation Franchise or Income Tax Return - Water's-Edge Filers; and
- Form 109, Exempt Organization Business Income Tax Return.

Additional Information

The FTB provides more information on IRC Sec. 965 in its 2017 Summary of Federal Income Tax Changes at https://www.ftb.ca.gov/law/legis/Federal-Tax-Changes/2017.pdf

California Guidance – Taxable Year 2017 IRC Section 965 Reporting, California Franchise Tax Board, May 2018

Florida

Corporate Income Tax Guidance Provided on Repatriation Income

Amendments made to the Internal Revenue Code (IRC) by the Tax Cuts and Jobs Act (P.L. 115-97) impose a one-time transition tax at a reduced rate on foreign earnings as if they had been repatriated to the United States, for Florida corporate income tax purposes. Florida annually adopts the IRC as it exists on January 1. As a result, Florida adopts any changes related to determining federal taxable income that were made during the previous year at the time the changes became law. Florida legislation enacted this year amends the state Income Tax Code to adopt the IRC retroactively to January 1, 2018. This means Florida's rolling conformity follows the computation of federal taxable income, including any IRC Sec. 965 income required to be included in the last taxable year beginning before January 1, 2018.

IRS Guidance on IRC Sec. 965

Recently, the Internal Revenue Service (IRS) issued guidance in Publication 5292 How to Calculate Section 965 Amounts and Elections Available to Taxpayers, and questions and answers about reporting related to IRC Sec. 965 (https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns). Publication 5292, which discusses S-corporations, partnerships, and real estate investment trusts separately from other entities, instructs taxpayers to compute repatriation income outside the standard computations of federal taxable income. The IRS guidance also provides that a taxpayer should make two separate payments of any tax due:

- one payment reflecting tax owed without regard to IRC Sec. 965; and
- a second separate payment reflecting tax owed resulting from IRC Sec. 965 and not otherwise satisfied by another payment or credit.

Repatriation Income

Generally, repatriation income under IRC Sec. 965 does not flow into federal taxable income. There is no Florida addition in Sec. 220.13(1)(a), Florida Statutes, for repatriated income excluded from the federal income tax computation. As a result, no Florida corporate income tax is due on repatriation income that is excluded from the standard computation of federal taxable income. Moreover, such repatriation income is excluded from the Florida apportionment fraction computation.

However, to the extent repatriation income flows into federal taxable income, such as through a real estate investment trust (federal Form 1120-REIT), it would be included in the starting point of the Florida corporate income tax computation on Line 1 of the front page of the Florida return. If this occurs, pursuant to Sec. 220.13(1)(b)2.b., Florida Statutes, the repatriated amount is subtracted as subpart F income, net of direct and indirect expenses incurred in the taxable year.

Tax Information Publication, No. 18C01-01, Florida Department of Revenue, April 27, 2018

Indiana

IRC Conformity Bill Enacted

Indiana has enacted a corporate and personal income tax Internal Revenue Code (IRC) conformity legislation. The legislation makes further changes not covered in the previous story.

Corporate Income Taxpayers

REIT. For a real estate investment trust (REIT), the IRC Sec. 965(c) deduction must be added back to the extent the taxpayer:

- included IRC Sec. 965 income in its federal income; or
- is required to add back dividends paid to shareholder of a captive REIT.

IRC Sec. 965. When a taxpayer adds back IRC Sec. 965 amounts, certain rules will apply when determining "adjusted gross income derived from sources within Indiana" for tax years after December 25, 2016. If a taxpayer:

- cannot claim an Indiana foreign source dividend deduction, the IRC Sec. 965 amounts will not be considered receipts in any tax year;
- can claim the deduction, the amounts will be considered receipts in the year the taxpayer reports them as gross income, to a limited extent.

IRC Sec. 951A. The definition of Indiana "foreign source dividends" is expanded to include IRC Sec. 951A income and IRC Sec. 965 amounts the taxpayer has added back.

If a taxpayer has federal income because of IRC Sec. 951A, certain rules will apply when determining "adjusted gross income derived from sources within Indiana." If a taxpayer:

- cannot claim an Indiana foreign source dividend deduction, the IRC Sec. 951A income is not included; and
- can claim the deduction, IRC Sec. 951A income, is included.

Personal Income Taxpayers

The tax credit for contributions to a college 529 plan is amended. For amounts used to pay qualified K-12 expenses, the 2018 credit is the sum of 20% multiplied by total taxpayer contributions to the plan during the tax year, plus the lesser of:

- $500; or
- 10% multiplied by the amount of the contributions that will be used to pay for qualified K-12 education expenses.

In 2019 the credit for qualified K-12 expenses is:

- 20% multiplied by total taxpayer contributions to the plan during the tax year; plus
- 20% multiplied by the taxpayer contributions to the plan during the tax year, designated to pay for qualified K-12 education expenses.

Tax Credits

A taxpayer, pass through entity, shareholder, partner, or member of a pass through entity can elect to carry forward some economic development credits earned for 2017. The credits can be carried forward to 2018. The credits that can be carried forward are the:

- enterprise zone investment cost credit;
- industrial recovery tax credit;
- community revitalization enhancement district tax credit;
- venture capital investment tax credit;
- Hoosier business investment tax credit; and
- Hoosier alternative fuel vehicle manufacturer tax credit.

H.B. 1316a, Laws 2018, effective May 14, 2018 and as noted

Remote Retailers Encouraged to File Taxes; Limited Time Voluntary Disclosure Program

Indiana is offering out-of-state online retailers that have inventory in third-party Indiana warehouses for sale to Indiana customers a voluntary disclosure initiative. The one-time initiative will run through December 31, 2018. The program allows out-of-state online retailers to enter into an agreement with Indiana to fulfill sales, use and income tax obligations. Retailers must meet all of the following qualifications to apply:

- have inventory located in a third-party Indiana warehouse for sale to Indiana customers;
- never filed tax returns in Indiana for the tax type in question;
- never registered for tax type in question;
- never been audited or contacted by Indiana about tax type in question; and
- is not an Indiana resident that has clearly defined sales tax and income tax filing obligations in the state.

More details on the voluntary disclosure program and how online businesses can apply can be found on the Department of Revenue website at www.in.gov/dor/6327.htm.

News Release, Indiana Department of Revenue, May 2, 2018

Kentucky

Kentucky Requires IRC §199A Addback, Restores Credits

Kentucky legislation containing important corporate and personal income tax provisions became law without Gov. Matt Bevin's signature. The law reenacts most of the changes enacted by the tax reform legislation (H.B. 366). However, the law also makes other noteworthy changes that:

- require combined reporting by unitary business groups;
- establish an IRC §199A addback adjustment;
- maintain a 3-factor apportionment formula for telecommunications companies;
- reduce the suspension period for venture capital and angel investment credits;
- establish new statewide caps for those credits;
- restore certain repealed credits;
- extend the deadline for submitting a copy of a final federal income tax audit; and
- impose new electronic filing requirements on certain taxpayers.

A separate story covers details on the new combined reporting requirements.

Highlights of Reenacted Tax Reform Provisions

Highlights of reenacted tax reform provisions include:

- updating the IRC conformity date for computing tax liability from December 31, 2015 to December 31, 2017;
- replacing graduated tax rates with a flat 5% rate for both corporations and individuals;
- requiring most taxpayers to use a single receipts factor apportionment formula;
- making most taxpayers apply market-based sourcing rules for apportioning receipts from services and intangibles.

IRC §199 Addback Adjustment

IRC §199A allows taxpayers, other than corporations, a deduction for up to 20% of domestic qualified business income from:

- partnerships;
- S corporations; or
- sole proprietorships.

The deduction was enacted by the Tax Cuts and Jobs Act (P.L. 115-97).

Effective for tax years after 2017, individuals who claim the IRC §199A deduction must include the amount of their deduction in their Kentucky adjusted gross income.

Apportionment Rules for Telecommunications Companies

Kentucky continues to apply a 3-factor apportionment formula to telecommunications companies for tax years after 2017. The formula applies to providers of:

- communications services;
- cable services; and
- internet access.

The formula consists of:

- a property factor (25%);
- a payroll factor (25%); and
- a double-weighted sales factor (50%).

Telecommunications companies must also continue to use the income-producing activity and costs of performance rules for apportioning sales from other than tangible personal property. Under these rules, sales must be sourced or assigned to Kentucky if:

- the income-producing activity is performed entirely in Kentucky; or
- the income-producing activity is performed both in and outside the state and a greater proportion of the activity is performed in Kentucky than in any other state, based on costs of performance.

KIFA and Angel Investor Credits

Effective for tax years beginning after 2018 and before 2021, Kentucky suspends approval for credits under the:

- Kentucky Investment Fund Act (KIFA) and
- angel investment program.

The tax reform legislation previously suspended those credits for 4 years.

Effective for tax years beginning after 2020, the statewide cap on the KIFA and angel investor credits is reduced from $40 million to $3 million each year.

KIRA, KJRA, and IEIA Credits

The law restores tax credits that may be awarded under the:

- Kentucky Industrial Revitalization Act (KIRA);
- Kentucky Jobs Retention Act (KJRA); and
- Incentives for Energy Independence Act (IEIA).

The tax reform legislation repealed both the KJRA and IEIA credits. It also suspended the KIRA credit for the same 4 year period as the KIFA and angel investor credits.

Federal Audit Changes

The deadline for submitting a copy of a final federal audit determination to the Kentucky Department of Revenue is extended from 30 days to 180 days after conclusion of the audit. The tax reform legislation previously extended the deadline from 30 days to 90 days after conclusion of the audit.

Electronic Filing

Corporations and pass-through entities that report $1 million or more in federal gross receipts for the tax year must file Kentucky income and limited liability entity tax returns electronically. In addition, the electronic filing threshold for employers who issue withholding statements is reduced from 100 to 25 statements annually.

Ch. 207 (H.B. 487), Laws 2018, effective April 26, 2018 and as noted

Kentucky Enacts Combined Reporting

Kentucky became the latest state to enact combined income tax reporting for corporations that are members of a unitary business group.

When do the combined reporting requirements take effect?

The combined reporting requirements take effect for tax years beginning after 2018.

Are there exceptions to combined reporting?

Corporations that meet the definition of an "affiliated group" under IRC Sec. 1504(a) may elect to file a Kentucky consolidated return. An affiliated group may elect to file a Kentucky consolidated return even if the group does not file a federal consolidated return. The election is binding for 8 years.

What is a “unitary business”?

A "unitary business" means a single economic enterprise that is made up either of:

- separate parts of a single corporation; or
- a commonly controlled group of corporations.

The enterprise is also sufficiently interdependent, integrated, and interrelated through their activities to provide a synergy and mutual benefit that produces:

- a sharing or exchange of value among the group members; and
- a significant flow of value to the separate parts.

Kentucky applies the term to broadest the extent permitted by the U.S. Constitution.

What corporations must be included in the combined report?

A Kentucky combined report must include the income and the apportionment fraction of all corporations that are members of the unitary business. Specifically it must include group members:

- that are incorporated in the U.S. or formed under the laws of any state, the District of Columbia, or any U.S. territory or possession;
- that earn more than 20% of income from intangible property or services that are deductible against another combined group member’s apportionable income; and
- that are doing business in a tax haven.

Kentucky may:

- require inclusion of income and apportionment factors from corporations that are not part of the water's edge group, but are members of the unitary business; and
- force combination of corporations that are not, or would not be combined, if the corporation were doing business in Kentucky.

The Kentucky Department of Revenue also may expand the water's edge group if it finds tax avoidance or evasion.

What is a tax haven jurisdiction?

A tax haven is any jurisdiction that, during the tax year, has no or nominal effective tax on the relevant income and:

- has laws or practices that prevent effective intergovernmental exchange of information on taxpayers benefitting from the tax regime;
- has a tax regime that lacks transparency;
- facilitates the establishment of foreign-owned entities without the need for a local substantive presence;
- prohibits foreign-owned entities from having any commercial impact on the local economy;
- excludes resident taxpayers from taking advantage of the tax regime's benefits;
- prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or
- has created a tax regime that is favorable for tax avoidance based on an overall assessment of relevant factors (e.g., a significant untaxed offshore financial or other services sector relative to its overall economy).

A tax regime lacks transparency if:

- the details of legislative, legal, or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers; or
- the information needed by tax authorities to determine a taxpayer's correct tax liability (e.g., accounting records and underlying documentation) is not adequately available.

How is income tax liability for each combined group member computed?

Kentucky does not disregard the separate identities of combined group members. Each member is responsible for tax based on its share of taxable income or loss apportioned or allocated to Kentucky. This includes:

- any income apportionable to Kentucky from combined groups of which it is a member;
- any income apportionable to Kentucky from a distinct business activity conducted in and outside the state entirely by that member;
- income sourced to Kentucky from the sale or exchange of capital or assets and from involuntary conversions;
- nonapportionable income or loss allocable to Kentucky;
- income or loss allocated or apportioned in an earlier year, other than a net operating loss (NOL), that must be taken into account as Kentucky income during the tax year; and
- the member's NOL carryforward.

A combined group's total income is determined as if the members were not consolidated for federal purposes. Total income is the sum of each members federal taxable income modified by Kentucky addition and subtraction adjustments. If a corporation is a member of a pass-through entity (e.g., S corporation, partnership, or limited liability company), the group must include that member's distributive share of the entity's income.

Does Kentucky require the elimination of intercompany transactions?

Income from an intercompany transaction between group members must be deferred according to the federal rules that apply to federal consolidated group members.

Deferred income must be restored to the seller's income earned immediately before the event if:

- the buyer resells the intercompany item to an entity that is not a group member;
- the buyer resells the intercompany item to an entity that is a group member for use outside the buyer's and seller's unitary business;
- the buyer converts the intercompany item to a use outside the buyer's and seller's unitary business; or
- the buyer and seller are no longer members of the same combined group.

Can group members use other member's NOLs, deductions, or credits?

NOLs belong to the group member that sustained the loss. The NOL is applied as a deduction in a carryforward year only if that member has positive Kentucky net income.

The same rule applies to credits and most other deductions. A member's credits or deductions, other than an IRC Sec. 170 charitable expense deduction, may not be shared with other group members and applied against the group's total income. In addition, any group member's expense that is associated with another group member's nonapportionable or exempt income must be assigned to that other member.

However, a member's IRC Sec. 170 charitable expense may be subtracted from a combined group's apportionable income. In computing the deduction, the IRC 170 income limitations apply to the group's entire apportionable income. Any remaining amount must be treated as a nonapportionable expense belonging to the member that incurred the IRC Sec. 170 expense. The IRC Sec. 170 income limitations apply to the nonapportionable income of that specific member. Any charitable deduction carryover deduction to a later tax year must be treated as originally incurred by the same member. The charitable expense deduction rules must be applied again in later tax years to determine the allowable deduction for that year.

Can group members offset gains or losses against the gains or losses of other group members?

Gain or loss from the sale or exchange of capital assets must be removed from the total separate net income of each group member. All members' gain and loss for the class must be combined without netting between the classes. Each class of net gain or loss must be separately apportioned to each member using the member's apportionment percentage. This applies to:

- short-term capital gains or losses;
- long-term capital gains or losses;
- IRC Sec. 1231 property; and
- involuntary conversions.

Each group member must then net its apportioned business gain or loss, including any apportioned gain and loss from other combined groups, against the member's nonapportionable gain and loss allocated to Kentucky. This determination must be made:

- using the rules under IRC Secs. 1222 and 1231; and

- without regard to any of the member’s gains or losses that are nonapportionable items allocated to another state.

Any resulting Kentucky income or loss must be:

- applied to that member’s other Kentucky income or loss; or
- if the loss is limited by IRC Sec. 1211, carried forward by that member and treated as a Kentucky short-term capital loss in the carryforward year.

How do group members apportion income to Kentucky?

A combined group member’s share of the business income apportionable to Kentucky is the product of:

- the combined group’s apportionable income; and
- the member's apportionment fraction.

The numerator of the apportionment fraction consists of the member’s sales from the combine group’s unitary business in Kentucky. The denominator equals the sales of all combined group members from the group's unitary business in every location.

Pass-through entity sales must be included in the owner-member’s apportionment percentage. The amount is based on a ratio:

- the numerator of the ratio is the amount of the member’s distributive share of the entity's unitary income included in the combined group’s income; and
- the denominator of the ratio is the amount of the entity's total unitary income.

The Kentucky Department of Revenue may apply an alternative apportionment method that includes:

- 1 or more additional factors that will fairly represent a member's business activity in Kentucky; or
- any other method to properly reflect a fair allocation and apportionment of the group's income.

Does the combined group have a designated agent?

A combined reporting group must annually designate 1 member to file a single Kentucky return for the other group members. The designated agent:

- consents to responsibility for the tax liability of all other members included in the combined report;
- agrees to act as agent for those taxpayers for the tax year on matters relating to the combined report.

However, tax liability may be assessed against the other members if for any reason the designated agent is unwilling or unable to perform its responsibilities.

Ch. 207 (H.B. 487), Laws 2018, effective April 26, 2018 and as noted

Maryland

Phase-In of Single-Sales Factor Formula Enacted

Maryland enacted legislation that phases-in use of a single-sales factor apportionment formula for corporate income tax purposes. Currently, the standard formula is a three-factor formula (sales, property, and payroll), with a double-weighted sales factor. However, certain manufacturers currently must use a single-sales factor formula.

Standard Formulas Through 2022

Beginning in 2018, the sales factor carries more weight each year in the standard apportionment formula as follows:

- 2018 Tax Year – Three-factor formula, with the sales factor multiplied by three;
- 2019 Tax Year – Three-factor formula, with the sales factor multiplied by four;
- 2020 Tax Year – Three-factor formula, with the sales factor multiplied by five; and
- 2021 Tax Year – Three-factor formula, with the sales factor multiplied by six.

Then, beginning with the 2022 tax year, the state will use a single-sales factor formula as its standard apportionment formula.

Headquarters Exception

Certain corporations with their worldwide headquarters in Maryland may still elect to use the current double-weighted sales factor formula. To qualify for this exception, a corporation must be included in a group of corporations, including a parent corporation, that:

- filed a Form 10-Q with the Securities and Exchange Commission for the quarterly period ending June 30, 2017;
- has its principal executive office in Maryland; and
- employs at least 500 full-time employees at the parent corporation's principal executive office in Maryland at all times between July 1, 2017, and June 30, 2020.

The election is made each year. However, the corporation must file a federal corporate income tax return for that year.

To determine an electing corporation's Maryland modified income, gross income from intangible investments are included in the formula's numerator based on the average of the property and payroll factors. Intangible investments include:

- dividends;
- interest;
- royalties; and
- capital gains from the sale of intangible property.

Manufacturers

Manufacturers continue to use a single-sales factor formula as required under current law.

Ch. 341 (S.B. 1090), Laws 2018, effective July 1, 2018, applicable as noted; Ch. 342 (H.B. 1794), Laws 2018, effective July 1, 2018, applicable as noted

Michigan

Small Business Exemption for Industrial and Commercial Personal Property Amended

Provisions governing the Michigan personal property tax exemption for industrial or commercial Provisions governing the Michigan personal property tax exemption for industrial or commercial personal property have been amended.

Filing statement

Owners of eligible property must file a statement claiming the exemption no later than February 20 of the first year the exemption is claimed. Previously, the owner was required to file the exemption statement annually.

Rescission of exemption

An exemption remains in effect until the personal property is no longer eligible personal property. An owner of property that is no longer eligible for exemption must file a rescission by February 20 of the year the property loses eligibility. An owner that fails to file a rescission and whose property is later found to be ineligible is liable for repayment of any additional taxes with interest.

Audit program

A local unit of government may develop an audit program to evaluate the information submitted in a property owner's filing statement for the current year and the three calendar years preceding the audit. Any resulting assessment must be paid within 35 days of issuance. An assessor may no longer deny a claim for exemption for the current year and the immediately preceding three calendar years.

Act 132 (H.B. 5261), Laws 2018, effective May 3, 2018

Withholding Reporting Deadline Changed, E-Filing Requirement Enacted .

Beginning with the 2018 tax year, the Michigan withholding statement and annual reconciliation return are due on January 31. For tax years before 2018, the deadline was February 28.

Employers with more than 250 employees must begin filing their annual or report electronically.

Act 118 (H.B. 5091), Laws 2018, effective April 26, 2018, and applicable as noted

New York

Nonresident Partner’s Treatment of Gain or Loss on Certain Sales or Transfers of Interest Discussed

For personal income tax purposes, the New York Department of Taxation and Finance has issued a technical memorandum discussing the expanded definition a nonresident partner’s treatment of gain or loss on certain sales or transfers of a partnership or membership interest (under N.Y. Tax Law Section 632(a)(1)). Further, the technical memorandum provides information on transactions considered subject to the provisions of IRC section 1060 (special allocation rules for certain asset acquisitions) and on computing the amount of gain or loss derived from New York sources. It further provides examples of how to compute the amount of gain or loss derived from New York sources.

TSB-M-18(2)I, New York Department of Taxation and Finance, April 6, 2018

New York City

Guidance Issued on IRC §965 Deemed Repatriation Income

Tax considerations and late payment penalty relief is discussed for New York City taxpayers affected by IRC §965 deemed repatriation income and subject to the following City taxes:

- general corporation tax (GCT),
- banking corporation tax (BTX), and
- unincorporated business tax (UBT).

Reporting and payment: Taxpayers subject to the GCT, BTX, and UBT must report their IRC §965(a) inclusion amounts and IRC §965(c) deduction amounts on IRC 965 Transition Tax Statements and their applicable federal tax forms. The GCT, BTX, and UBT do not provide specific modifications for these income and deduction amounts. Instead, the income must be classified as business income, investment income, or income from subsidiary capital, to the extent applicable, and deductions must be attributed to that income, including the IRC §965(c) amount. The net income (net section 965 income) must be allocated or, in the case of income from subsidiary capital, excluded, in accordance with its classification and existing law. Under the GCT, BTX and UBT, taxpayers must pay the additional New York City tax liability generated by net section 965 income in the same tax year that they report the IRC §965(a) inclusion for federal income tax purposes. They may not elect to defer payment of the New York City tax attributable to their net section 965 income, whether or not their owners elect to defer payment for federal income tax purposes.

Penalty relief: The enactment of the federal Tax Cuts and Jobs Act (TCJA) so late in 2017 constitutes reasonable cause for taxpayers to underpay the portion of their New York City tax liabilities attributable to net section 965 income when due for the 2017 tax year. Accordingly, if a taxpayer receives a bill that includes a penalty for failing to pay the correct amount of tax when due, and the underpayment is attributable to net section 965 income, the taxpayer may request an abatement of the penalty. The request must include a copy of the IRC 965 Transition Tax Statement. If the taxpayer submits the request with this information, and, by October 15, 2018, pays the remaining tax and applicable interest due (or enters into an installment payment agreement to pay the remaining tax and applicable interest due), the late payment penalty will be waived.

Finance Memorandum 18-4, New York City Department of Finance, April 20, 2018

Ohio

Stock Options Properly Subject to Municipal Income Tax

An Ohio taxpayer's request for a refund of city personal income tax was properly denied. The taxpayer worked for a Cleveland-based corporation and, as part of her employment, was granted stock options. The taxpayer retired in 2009, but she chose to exercise the stock options only in 2014 and 2015, when she was a Florida resident. Upon her exercise of the options, the corporation withheld and remitted municipal income tax on the appreciation in the value of the underlying stock. The taxpayer requested refunds, and the Department of Revenue (department) denied the requests. The Municipal Board of Appeal affirmed the denials. The taxpayer filed an appeal arguing that (1) the amount received by the taxpayer was intangible income not subject to municipal income taxation; (2) that the appreciation in value of the stock was not taxable by Cleveland because the appreciation occurred after she ceased being a Cleveland resident; and (3) the department's actions violated the Due Process Clauses of the United States and Ohio Constitutions. However, it was noted that (1) the income at issue was not intangible income but compensation; (2) the taxpayer's argument that the appreciation in value occurred after she left Ohio and therefore was not subject to tax ignored the scheme established by the city's ordinances and regulations, and case law, that stock options granted as a form of compensation are taxable at the time they are exercised; and (3) the Ohio Board of Tax Appeals lacks authority to decide constitutional challenges. Accordingly, the taxpayer's appeal was dismissed.

Willacy v. City of Cleveland Board of Income Tax Review, Ohio Board of Tax Appeals, No. 2017-513, April 23, 2018

Oklahoma

Oklahoma Allows Transition Tax Installment Payment Election

Recently enacted Oklahoma legislation allows any taxpayer that elects to make installment payments of federal tax under IRC Sec. 965(h) to also pay any state income taxes due on such income in installments.

Recently enacted Oklahoma legislation allows any taxpayer that elects to make installment payments of federal tax Under IRC Sec 965(h), a U.S. shareholder of a deferred foreign income corporation (DFIC) may elect to pay the transition tax resulting from the mandatory inclusion of deferred foreign income in eight installments.

H.B. 3715, Laws 2018, effective July 1, 2018, applicable to tax years ending after January 1, 2017

Rhode Island

Treatment of IRC Sec. 965 Income for Fiduciaries Discussed

Rhode Island provided guidance on the state income tax treatment of IRC Sec. 965 income for fiduciaries (trusts and estates).

Federal Treatment

Under the federal Tax Cuts and Jobs Act (P.L. 115-97), taxpayers with untaxed foreign earnings must include accumulated post-1986 deferred foreign income (IRC Sec. 965 income) in 2017 tax year income. This income is

subject to tax at special effective tax rates. This is referred to as the "repatriation transition tax." Certain taxpayers can elect to defer payment of a portion of their repatriation transition tax. This election, however, does not defer recognition of the IRC Sec. 965 income. Therefore, the IRC Sec. 965 income, in its entirety, is recognized and included on a taxpayer's federal return for its last tax year beginning before 2018.

Rhode Island Treatment for Fiduciaries

Section 965 income is included for Rhode Island purposes on Form RI- 1041, Line 1. This is true whether or not the income has been distributed to a beneficiary. If the income has been distributed to a beneficiary, it should be included on Line 8 of federal Form 1041. If the income has not been distributed to a beneficiary, it should be included on Line 1 of the Transition Tax Statement attached to federal Form 1041.

Advisory for Tax Professionals 2018-21, Rhode Island Department of Revenue, Division of Taxation, April 25, 2018

Wisconsin

Wisconsin Issues Chart of TCJA Provisions Adopted by State

Wisconsin has issued a chart indicating which federal Tax Cuts and Jobs Act (TCJA) provisions are adopted by the state. The chart also indicates which TCJA provisions are not adopted by Wisconsin.

The chart is available on the Department of Revenue's website at
https://www.revenue.wi.gov/DORFAQ/IRCProvisions2017.pdf.

Wisconsin's IRC Conformity Update

Wisconsin set its IRC conformity date at December 31, 2017, for tax years beginning after 2017. However, Wisconsin did not adopt several significant TCJA provisions.

Chart of Federal Tax Cuts and Jobs Act Provisions Adopted by Wisconsin, Wisconsin Department of Revenue, April 2018

If you have any questions, please contact your tax advisor or:

Curtis Ruppal
877-622-2257, Ext. 34069
curtis.ruppal@plantemoran.com

Mike Merkel
877-622-2257, Ext. 33264
michael.merkel@plantemoran.com

Ron Cook
877-622-2257, Ext. 03211
ron.cook@plantemoran.com

Julie Corrigan
877-622-2257, Ext. 46509
julie.corrigan@plantemoran.com

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