



Indiana Department of Revenue

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Income Tax Information Bulletin #116

Subject: Indiana Provisions Related to the Tax Cuts and Jobs Act

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Summary of Changes

Other than nonsubstantive, technical changes, this bulletin has been updated to reflect that Indiana has continued expensing for specified research and experimental expenses as well as changes related to the net operating loss treatment of excess business losses and nonprofit separate line losses. In addition, this bulletin has been updated to remove obsolete provisions related to the definition of Internal Revenue Code and interest waiver provisions specifically applicable to 2018.

Introduction

HEA 1316-2018(ss), enacted and signed into law on May 14, 2018, made several material modifications to the definitions of "adjusted gross income" for individuals and corporations related to the federal Tax Cuts and Jobs Act.

In 2023, SEA 419-2023 enacted changes related to the amortization of specified research and experimental expenses. In addition, SEA 419-2023 provided a change in the net operating loss computation arising from excess business losses.

This bulletin will cover the most significant income tax changes and areas where Indiana treats certain income differently from the federal government's treatment. These changes are the

inclusion of deemed repatriated dividends under IRC § 965, treatment of global intangible low-taxed income, changes to the deductibility of business interest, and the treatment of Indiana net operating losses.

IRC Section 965 Reporting

Reporting on Returns for 2016 and 2017

For taxable years beginning after Dec. 25, 2016, a taxpayer who receives a deemed repatriated dividend under IRC § 965 will be required to include the gross amount of the dividend included in the taxpayer's federal adjusted gross income or federal taxable income in the taxpayer's Indiana adjusted gross income. The gross amount is the amount determined prior to any deduction under IRC § 965(c) (the deduction necessary to determine the reduced federal tax rate on such dividends). The inclusion of income will be retroactive in many cases.

For resident individuals, the individual will be required to add back the deduction taken on the IRC 965 Transition Tax Statement, Line 3. If the deduction is not reported on this form, report the amount otherwise reported to the individual as an IRC § 965(c) deduction. This amount includes any deductions under IRC § 965(c) reported to the individual from partnerships, S corporations, and trusts. Use Code 139 to report the addback.

For nonresident individuals, the individual will be required to add back the amount listed on the individual's Schedule IN K-1s as a Code 139 addback. If the deduction is not reported on this form, report the amount otherwise reported to the individual as an IRC § 965(c) deduction from pass-through entities, reporting only the amount considered to be apportioned to Indiana from the entity.

For S corporations and partnerships, the entity will be required to add back the deduction taken on the IRC 965 Transition Tax Statement, Line 3. If the deduction is not reported on this form, the entity will be required to report the amount otherwise reported to the entity as an IRC § 965(c) deduction. On the entity's Schedule IN K-1, report the amount to the shareholders or partners using Code 139. For nonresidents, report only the apportioned amount of the addback. The apportioned addback will also be part of the income reported on, and tax computed based on, the Schedule Composite and/or Schedule Composite-COR.

For C corporations other than real estate investment trusts (REITs), the corporation will be required to add back the amount reported by the corporation on the IRC Transition Tax Statement, Line 1. This amount includes any amounts reported to the corporation from partnerships and trusts. Use Code 138 to report the addback.

For REITs, the corporation will be required to add back the deduction taken on the IRC 965 Transition Tax Statement, Line 3. If the deduction is not reported on this form, report the amount otherwise reported to the entity as an IRC § 965(c) deduction. This amount includes any deductions under IRC § 965(c) reported to the corporation from partnerships and trusts. If a REIT makes an election under IRC § 965(m), the inclusion period and amounts will be followed by Indiana. In addition, if the IRS determines that all or part of the deemed dividend would be

excluded from the REIT's federal gross income, the resulting IRC § 965(c) deduction arising from the excluded income will not be required to be added back. This amount includes any amounts reported to the REIT from partnerships and trusts. Use Code 139 to report any addback.

For estates and trusts ("fiduciary"), if a fiduciary does not distribute a deemed repatriated dividend, the fiduciary will be required to add back the portion not distributed and reported on the IRC 965 Transition Tax Statement, Line 1. This includes amounts reported to the fiduciary from partnerships, S corporations, and other trusts. Report this amount as part of the modifications on Line 2 of the IT-41.

If a fiduciary does distribute a deemed repatriated dividend to a beneficiary, the fiduciary will be required to add back the amount of the IRC § 965(c) deduction that is related to the distributed amount and that is not reported to beneficiaries. This includes amounts reported to the fiduciary from partnerships, S corporations, and other fiduciaries. Report this amount as part of the modifications on Line 2 of the IT-41. In addition, if the fiduciary reports income for a beneficiary on IT-41 Schedule K-1, include the addback of the IRC § 965(c) deduction (for nonresidents, the apportioned amount) using Code 139. The apportioned amount is also subject to reporting and tax on the Schedule Composite.

For financial institutions tax, report on Line 15 of the FIT-20 the net amount (if any) of IRC § 965 income reported on Line 1 of the FIT-20. No special addback code is necessary.

If a taxpayer has already filed a tax return for a taxable year for which an addback is required, the taxpayer should file an amended return for the taxable year to report the addback. Otherwise, the addback should be reported on the original return for the taxable year.

NOTE: Any return or schedule reporting an adjustment for IRC § 965 income for taxable years beginning in 2016 and 2017 **MUST** be filed on paper. DOR cannot accept electronically filed returns with the required codes at this time.

Reporting on Returns for 2018 and Later

If you are reporting an IRC § 965 inclusion for 2018 **and** later, enter the § 965(c) deduction reported on federal Form 965 related to the portion included for that taxable year. This will be the amount reported on Line 17 of Form 965.

Foreign Source Dividend Treatment

If a C corporation subject to tax under IC 6-3 receives a deemed repatriated dividend, the dividend will be treated as a foreign source dividend under IC 6-3-2-12. The amount of the foreign source dividend is the amount included in Indiana adjusted gross income after required addbacks but prior to apportionment.

For apportionment purposes, the amount of the deemed repatriated dividend will not be included in the apportionment computation for entities other than C corporations. For C corporations, the amount of the deemed repatriated dividend treated as a receipt in the receipts denominator equals the deemed repatriated dividend included in Indiana adjusted gross income minus the

foreign source dividend deduction claimed for the repatriated dividend. If the recipient corporation has its commercial domicile in Indiana, this amount will be included in the receipts numerator.

Example #1: In 2017, LMNOP Corporation is required to include a deemed dividend of \$1 million from a controlled foreign corporation as a result of IRC § 965. LMNOP Corporation owns 60% of the controlled foreign corporation, for which LMNOP claims an 85% dividends received deduction. LMNOP would report \$150,000 of the dividends (\$1 million dividend minus \$850,000 deduction) in the receipts denominator and, if its commercial domicile is in Indiana, in the receipts numerator.

Global Intangible Low Taxed Income

For taxable years beginning in 2018 and later, taxpayers who receive global intangible low taxed income (GILTI) under IRC § 951A, are required to include those amounts in federal adjusted gross income or federal taxable income, depending on the entity type.

For C corporations subject to tax under IC 6-3, the corporation will be required to add back the deduction taken under IRC § 250(a)(1)(B) (the deduction necessary to determine the reduced federal tax rate for corporations) in determining Indiana adjusted gross income. Any IRC § 78 amount required to be added back under IRC § 250(a)(1)(B)(ii) will be permitted as part of the deduction otherwise allowable for IRC § 78 income. The portions attributable to IRC § 250(a)(1)(B)(i) and (ii) will be required to be reported separately.

Example #2: DEF Corporation has \$1 million in GILTI and \$50,000 in IRC § 78 income attributable to such income. DEF Corporation has a deduction of \$525,000 under IRC § 250(a)(1)(B). DEF is required to add back the \$525,000 deduction. The component attributable to IRC § 250(a)(1)(b)(i) is \$500,000. The IRC § 250(a)(1)(B)(ii) component of the addback is \$25,000.

In determining the amount allowable as a foreign source dividend under IC 6-3-2-12, the amount treated as a foreign source dividend will be equal to the amount included after application of IRC § 951A, but will not include any related IRC § 78 amounts.

Example #3: Using the example above, DEF Corporation would have a \$1 million foreign source dividend. It would apply IC 6-3-2-12 to this amount.

For apportionment purposes, S corporations, partnerships, and trusts will disregard any GILTI as a receipt for apportionment purposes. However, the income reported as GILTI still must be reported. C corporations subject to tax under IC 6-3 will report only the amount of GILTI taxable less the foreign source dividend deduction as a receipt in the denominator for apportionment purposes. For Indiana-domiciled corporations, this amount will also be included in the receipts numerator.

Interest Deduction

General Rule

For taxable years 2018 and later, the deduction for business interest will be allowed without regard to the limitations set forth in IRC § 163(j)(1). Thus, business interest expenses will be allowed in the year in which the expense is paid or incurred. Any amount in excess of the allowable federal amount will be a deduction in determining Indiana adjusted gross income. However, if a taxpayer carries over an interest expense from one year to a later year, the carried over amount will be an addback in determining Indiana adjusted gross income.

Thus, the computation of interest modification when an IRC § 163(j)(1) limitation is in place will be:

Current year federal business interest deduction – Current year business interest incurred

If this number is a positive, this is an addback. If the number is a negative, this is a subtraction.

Example #4: XYZ Corporation has \$20,000 in interest expense for 2018. However, under IRC § 163(j)(1), XYZ Corporation is only permitted to deduct \$5,000 in determining its federal taxable income. For 2018, XYZ reports a deduction of \$15,000 (\$20,000 interest incurred minus \$5,000 federal deduction).

In 2019, XYZ Corporation has no additional interest incurred but is permitted to claim a federal income tax deduction of \$6,000 of its 2018 interest. The \$6,000 federal deduction is required to be added back in determining the XYZ Corporation's Indiana adjusted gross income.

Special Reporting for Directly Related Interest Expenses

If a C corporation is required to add back any amount of directly related interest expenses, the taxpayer will add back the full amount of directly related interest expense in the year in which the interest is paid or incurred. No amount of a previously added-back directly-related interest expense will be required to be added back or subtracted in a taxable year after the year in which the expense is paid or incurred.

Net Operating Losses

Notwithstanding the federal changes to net operating losses (generally, 80% of taxable income and an unlimited carryforward period), Indiana will continue to allow net operating losses to be deducted up to 100% of Indiana adjusted gross income. In addition, Indiana will continue to have a 20-year carryforward of net operating losses from a given year. Finally, Indiana will continue to not permit net operating loss carrybacks.

For all taxpayers, the net operating loss calculation will follow the federal net operating loss calculation, with the modifications in IC 6-3-1-3.5 used to increase or decrease the Indiana net

operating loss (prior to any apportionment or allocation). However, any deductions under IC 6-3-2 are not permitted in determining net operating losses.

For corporations, the Indiana-specific addback for the federal GILTI deduction (IRC § 250(a)(1)(B)) is not considered to be a modification under IC 6-3-1-3.5 for purposes of determining the Indiana net operating loss. For estates and trusts, the Indiana-specific addback for the federal qualified business income deduction (IRC § 199A) is not considered to be a modification under IC 6-3-1-3.5 for purposes of determining the Indiana net operating loss.

For 2023 and later, Indiana will treat Indiana modifications that relate to current-year federal deductions that increase the federal excess business loss under IRC § 461(l) but are required to be added back for Indiana purposes as:

- not modifying adjusted gross income, but
- reducing the amount of net operating loss carryforward arising from the excess business loss.

However, if the Indiana modifications would reduce the net operating loss from excess business losses to zero, only the portion of modifications necessary to reduce the net operating loss to zero should be applied in this manner.

For separate trade or business losses for nonprofits in 2023 and later, if the trade or business has a federal net operating loss that does not appear in federal taxable income, then:

- any Indiana modifications arising from that trade or business are to be listed on Form IT-20NP,
- the Indiana modifications for that trade or business will be backed out of adjusted gross income as provided in the instructions, but
- the net operating loss from that trade or business will be adjusted to reflect the net modifications.

However, if the net operating loss for the current year would be reduced to zero, only the net modifications necessary to reduce the net operating loss will be backed out. The remaining modifications will be included in adjusted gross income for 2023 and going forward.

In addition, if a federal net operating loss from a separate trade or business is exhausted but an Indiana net operating loss remains, the remaining portion of the Indiana net operating loss is allowable against the Indiana adjusted gross income from other trades or businesses. Also, if a federal net operating loss from 2018 and later was carried back for federal purposes to a year prior to 2018, the Indiana net operating loss for that year is allowable against the income from other trades or businesses.

Research and Experimental Expense Amortization

Beginning in taxable year 2022, taxpayers who incur specified research and experimental expenditures are required for federal purposes to amortize their expenses over five years (15 years for expenses attributable to foreign research) as opposed to immediately claiming the expenses.

In 2023, Indiana enacted a new section, IC 6-3-2-29, as well as conforming changes to IC 6-3-1-3.5 and IC 6-5.5-1-2. These sections provide that specified research and experimental expenses are allowable in their entirety in the year the expense is paid or incurred, with addbacks for the actual federal deduction. However, in the case of expenses that are or would have been limited for federal purposes, such as basis or passive loss limitations, the amount of expensing is limited in a manner that would avoid deductions in excess of the amount allowable for federal purposes prior to 2022.

This allowance is retroactive to taxable years beginning Jan. 1, 2022, and later. The actual amount paid or incurred (or otherwise allowable) will be reported as a deduction using Code 641 for 2023 and later. The add-back of the actual federal deduction will be reported as an addback using Code 154 for 2023 and later. For taxable years beginning in 2022 only, use addback Code 120 instead of Code 154 and addback Code 147 instead of deduction Code 641.

Other Notable Tax Cuts and Jobs Act Provisions

In addition to the modifications mentioned above, HEA 1316-2018(ss) also provided additional modifications. Among the most notable are:

1. Under the Tax Cuts and Jobs Act of 2017, capital contributions made by a government or civic group are no longer eligible for the federal tax exclusion under IRC § 118. For Indiana, capital contributions made by a government or civic group after Dec. 22, 2017, are not subject to Indiana income tax.
2. For estates and trusts, the federal deduction allowable under IRC § 199A for qualified business income is required to be added back in determining Indiana adjusted gross income.
3. For the income tax credit for contributions to an Indiana College Choice 529 plan, the credit is allowable for contributions intended for K-12 education, and certain withdrawals for tuition at an Indiana school for K-12 may not be subject to recapture. See Income Tax Information Bulletin #98 for further details.

If you have any questions concerning this bulletin, contact the Tax Policy Division at taxpolicy@dor.in.gov.



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