

## DEPARTMENT OF STATE REVENUE

## Information Bulletin #116

## Income Tax

July 2018

Effective Date: December 26, 2016 (retroactive); January 1, 2018 (retroactive)

**SUBJECT:** Income Tax Provisions under HEA 1316-2018(ss)**REFERENCES:** [IC 6-3-1-3.5](#); [IC 6-3-1-11](#); [IC 6-3-2-2](#); [IC 6-3-2-2.2](#); [IC 6-3-2-2.5](#); [IC 6-3-2-2.6](#); [IC 6-3-2-12](#); [IC 6-3-3-12](#); [IC 6-3-4-1.5](#); [IC 6-3-4-4.1](#); [IC 6-3.1-1-3](#); [IC 6-3.1-21-6](#); [IC 6-5.5-1-2](#); [IC 6-8.1-3-17](#); [IC 6-8.1-10-1](#)

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**SUMMARY OF CHANGES**

This bulletin provides guidance on provisions enacted under HEA 1316-2018(ss), specifically changes relating to the requirements for inclusion of IRC § 965 income, inclusion of global intangible low-taxed income (GILTI), and modifications related to deductions for business interest. This bulletin also provides guidelines for interest and penalty waivers resulting from HEA 1316-2018(ss).

**I. INTRODUCTION**

HEA 1316-2018(ss) was enacted and signed into law on May 14, 2018. That bill updated the Indiana's definition of "Internal Revenue Code" under [IC 6-3-1-11](#) to be the code as in effect on February 11, 2018, subject to two minor exceptions. In addition, HEA 1316-2018(ss) made several material modifications to the definitions of "adjusted gross income" for individuals and corporations. 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.

**II. IRC CONFORMITY**

HEA 1316-2018(ss) updated the definition of "Internal Revenue Code" to the Internal Revenue Code as in effect on February 11, 2018. This incorporates provisions of the Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018. Various provisions of the Internal Revenue Code that expired in 2017 are allowed for the 2017 taxable year. In addition, the Tax Cuts and Jobs Act of 2017 is incorporated into Indiana law with various specific modifications.

**III. IRC SECTION 965 REPORTING****A. REPORTING ON RETURNS.**

For taxable years beginning after December 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, please 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, please 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, please 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, please 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(n), the inclusion period and amounts will be followed by Indiana. In addition, if the Internal Revenue Service 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 the net amount of IRC § 965 income on Line 15 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 2016 and 2017 MUST be filed on paper until further notice. DOR cannot accept electronically filed returns with the required codes at this time.**

## **B. 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:** In 2017, LMNOP Corporation is required to include a deemed dividend of \$1,000,000 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 (\$1,000,000 dividend minus \$850,000 deduction) in the receipts denominator and, if its commercial domicile is in Indiana, in the receipts numerator.

### C. PAYMENT OF TAX AND RELIEF OF INTEREST AND PENALTIES

For purposes of payment of tax, the Indiana tax liability resulting from the inclusion of IRC § 965 income (including any addbacks) is considered to be the tax liability for the year in which the income is included. Indiana will not follow any federal laws related to payment of tax over an extended period.

If a taxpayer is required to add back any amount resulting from the partial or total addback of deemed repatriated dividends as a result of [IC 6-3-1-3.5](#), or as a result of any other provision in HEA 1316-2018(ss), a taxpayer may remit any additional tax that was otherwise due before May 16, 2018, without interest or penalties. The additional tax must be remitted on or before July 13, 2018. The amount of tax for which this relief will be granted is equal to the tax computed after application of HEA 1316-2018(ss) minus the tax computed before application of HEA 1316-2018(ss). Any unpaid amounts due for other reasons (e.g., an unpaid liability with no change in income) is NOT eligible for interest or penalty relief. Further, for purposes of [IC 6-8.1-6-1\(d\)](#), these payments will be considered paid on or before the due date for purposes of determining whether penalties are impossible for taxpayers that have requested an extended due date for filing Indiana income tax returns.

For purposes of computing estimated tax penalties under [IC 6-3-4-4.1](#), the tax due as a result of income included pursuant to IRC § 965 will not be considered as part of the computation. For purposes of computing any estimated taxes due, please complete Schedule IT-2210A (for individuals) or provide a separate computation of estimated taxes due for any affected tax year.

For tax preparers subject to [IC 6-3-4-1.5](#), if the department requires a return be filed on paper as a result of an IRC § 965 addback, and the return would have otherwise been required to be filed electronically, no penalty under [IC 6-3-4-1.5](#) will be assessed, and the return reporting an IRC § 965 addback will not count toward the return limit for assessing the penalty.

### IV. GLOBAL INTANGIBLE LOW TAXED INCOME

For taxable years 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:** DEF Corporation has \$1,000,000 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 deduction 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:** Using the example above, DEF Corporation would have a \$1,000,000 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.

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**V. INTEREST DEDUCTION****A. 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:** 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.

**B. 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.

**VI. 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.

**VIII. OTHER NOTABLE PROVISIONS**

In addition to conforming to several federal provisions that expired in 2016 but were extended by the Bipartisan Budget Act of 2018, HEA 1316 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 December 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.

4. For the enterprise zone loan investment credit (prior to repeal), the industrial recovery tax credit, the community revitalization enhancement district tax credit, the venture capital investment tax credit, the Hoosier business investment tax credit, and the Hoosier alternative fuel vehicle manufacturer tax credit, a taxpayer may file a written election to not claim an otherwise allowable credit for the 2017 taxable year and instead claim the credit for the 2018 taxable year. The election must be filed with DOR on or before the due date the taxpayer's 2017 tax return.

5. In determining the earned income tax credit, Indiana has adopted relief provisions under the Bipartisan Budget Relief Act of 2018 and also has adopted use of the federal chained cost of living index.

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