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Minnesota: Corporate conformity legislation, effective retroactively

The Minnesota legislature passed a series of budget bills, including an omnibus tax bill, during a brief special session.

The tax bill (House File 5) was signed into law on May 30, 2019, and updates the state's conformity to the Internal Revenue Code in an effort to address changes made by the 2017 federal tax law (the law that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)).

Effective date

For corporate taxpayers, most of the changes are effective retroactively to tax years beginning after December 31, 2017. Accordingly, 2018 corporate returns (due in the coming months) will need to reflect the current version of the Internal Revenue Code, rather than to be completely decoupled from federal law.

In contrast, many individual taxpayer provisions in response to the Tax Cuts and Jobs Act will be effective beginning with the 2019 tax year. Based on initial discussions with the Department of Revenue, it appears that individual taxpayers may not be required to amend their 2018 returns (originally due April 15, 2019 and filed in accordance with the published forms available at that time). At the time of those forms, there was no conformity to the TCJA because that was the status of Minnesota law prior to the enactment of House File 5.

Overview

In addition to conformity, House File 5 makes a number of other tax changes including:

- An individual income tax rate reduction
- Revisions to the sales and use tax collection requirements for marketplace facilitators
- A rate reduction and permanent extension of the MinnesotaCare tax

Below is a more detailed discussion of the corporate conformity provisions.

General conformity

Under Minn. Stat. § 289A.02, the general definition of “Internal Revenue Code” (unless specifically defined otherwise) is advanced from the Internal Revenue Code of 1986 as amended through December 16, 2016, to the Code as amended through December 31, 2018.

This section is “...effective the day following final enactment except the changes incorporated by federal changes are effective retroactively at the same time the changes became effective for federal purposes.”

KPMG observation

The language above appears to provide the provisions in the legislation addressing federal tax reform are effective as of the date the federal provision became effective.

Deferred foreign income

“Deferred foreign income” means the income of a domestic corporation that is included in net income under IRC section 965.

Minn. Stat. § 290.0133 Subd. 18 provides a new subtraction for the amount of deferred foreign income recognized because of IRC section 965. This subtraction is retroactive to the date when the provisions addressing section 965 income became effective for federal purposes.

Because Minnesota did not update its conformity to the Internal Revenue Code in 2018 and had not, prior to this legislation, adopted any of the TCJA provisions, the end result for 2017 calendar year taxpayers is the same—section 965 income will not be subject to corporate income tax in Minnesota.

GILTI and FDII

Minn. Stat. § 290.0133, which addresses the additions to federal taxable income required to be made by corporations, is amended to provide that an addition is required for the amount of any special deduction allowed under IRC section 250. This effectively means that Minnesota corporate taxpayers will not receive the beneficial rate of tax that applies to foreign derived intangible income (FDII). Minn. Stat. § 290.0134 adopts a new subtraction under Subd. 17 for the amount of global intangible low-taxed income (GILTI) included in gross income under IRC section 951A.

Thus, while taxpayers will not receive the section 250 deduction that applies to GILTI at the federal level, GILTI will be subtracted from the Minnesota corporate tax base. These changes are effective for tax years beginning after December 31, 2017.

NOL limitations

Minn. Stat. § 290.095 Subd. 2, which addresses the net operating loss (NOL) deduction, has been amended to provide that the “amount of the net operating loss deduction under this section must not exceed 80 percent of taxable net income in a single taxable year.”

This section is effective retroactively for tax years beginning after December 31, 2017.

KPMG observation

Unlike at the federal level, the NOL limitation does not appear specific to losses incurred in years beginning after December 31, 2017. In addition, the 15-year loss carryforward provision remains unchanged.

Subpart F income

Minn. Stat. § 290.21, which governs deductions allowed to corporations, is amended to adopt new Subd. 9. This provision confirms that the net income of a domestic corporation that is included pursuant to IRC section 951 is dividend income eligible for the state's dividends received deduction.

Interest limitation under IRC section 163(j)

House File 5 does not decouple from the 163(j) limitation on the deductibility of interest expense. Thus, Minnesota conforms to the federal limits. However, the legislation specifies that the limitation under IRC section 163(j) must be computed using the combined report entities included in the unitary group. The limitation must be aggregated between combined report entities consistent with the application to a consolidated group for federal income tax purposes. This section is effective retroactively for taxable years beginning after December 31, 2017.

Miscellaneous provisions

House File 5 did not address the TCJA limitations on deductions for lobbying expenses, employer-provided meals, transportation and fringe benefits, and entertainment expenses, or the new limits related to executive compensation. As such, effective for tax years beginning after December 31, 2017, Minnesota will conform to these federal provisions.

Minnesota also adopted the changes to IRC section 118 that require corporations to include in income certain contributions made to the corporation other than in exchange for stock by state and local governments and others, and the federal provisions limiting deferral of gain to like-kind exchanges of real property.

Minnesota will continue to follow its historical treatment of bonus depreciation—generally allowing only 20% in the first year, with the remainder deducted ratably over the following five years.

Corporate AMT

Although the federal corporate alternative minimum tax is repealed, the Minnesota corporate AMT remains intact. Minn. Stat. § 290.0921, which governs the corporate alternative minimum tax, has been amended to redefine the Internal Revenue Code as meaning the IRC, as amended through December 16, 2016. This change applies for tax years beginning after December 31, 2017.

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