

CORPORATE INCOME TAX REVIEW

AUGUST 22, 2018

PUBLIC MEETING SUMMARY

The Department of Revenue held a public meeting in Tallahassee on August 22, 2018, to allow interested parties to present comments on the impact of the Tax Cuts and Jobs Act of 2017 on the Florida Corporate Income Tax and on Florida businesses. Members of the public unable to attend were able to participate by webinar. Three documents were available: the meeting agenda, a list of the current topics under review, and Section 3 of Chapter 2018-119, Laws of Florida. A sign-in sheet was provided for members of the public who were in attendance and twelve people provided their names and contact information. Additionally, forty people registered and attended via webinar.

The moderator began the meeting by providing an overview of Section 3 of Chapter 2018-119, Laws of Florida, which directs the Department to conduct the review and requires a final report be submitted to the Governor, President of the Senate, Speaker of the House of Representatives, and the Chairs of the appropriate legislative committees by February 1, 2019. It was explained that the Department has identified thirteen topics with the potential to have a significant impact on Florida. Topics were introduced by providing a short explanation of each item (see below) along with relevant statutory citations. Public comments were accepted following the explanation of each topic. To accommodate the request of a public participant, two topics were addressed first.

Meeting documents, including a meeting transcript, are available on the Department's CIT Review webpage: floridarevenue.com/citreview

Global Intangible Low-Taxed Income

The Tax Cuts and Jobs Act of 2017 creates Internal Revenue Code section 951A, which imposes a tax on the global intangible low-taxed income (GILTI) of certain U.S. taxpayers and their affiliates for tax years beginning on or after January 1, 2018. GILTI is included in a company's gross income and generally treated in a manner similar to Subpart F income, with certain deductions and exemptions.

Karl Frieden, Vice President and General Counsel for the Council on State Taxation (COST) and Diann Smith of McDermott Will & Emery representing the State Tax After Reform (STAR) Partnership provided comments on this topic.

It was noted that both COST and STAR had provided written comments as well and that the public could find these comments on the Department's website.

Net Interest Deduction

The deduction for interest expenses is limited to 30% of “adjusted taxable income” (ATI) plus business interest income, with special elections available for real property trades and businesses. For the first four years after the enactment of the Tax Cuts and Jobs Act of 2017, ATI is computed without subtracting depreciation, amortization, or depletion in addition to interest and taxes. Beginning in 2022, ATI will be decreased by depreciation, amortization, and depletion, thus making the computation of 30% of net interest expense exceeding earnings before interest and taxes.

Karl Frieden and Diann Smith provided comments on this topic.

Treatment of Deferred Foreign Income Upon Transition to a Participation Exemption System of Taxation

The Tax Cuts and Jobs Act of 2017 amends the Internal Revenue Code section 965 to impose a one-time transition tax on deferred (untaxed) foreign income as if such income had been repatriated to the United States in the business’s last tax year beginning before January 1, 2018.

Mark Holcomb of Dean, Mead & Dunbar; Karl Frieden; and Diann Smith provided comments on this topic.

Repeal of Alternative Minimum Tax

The Tax Cuts and Jobs Act of 2017 repeals the federal corporate alternative minimum tax (AMT) for taxable years beginning after December 31, 2017. The Act also accelerates the use of previously earned federal AMT credits by not only allowing those credits to offset the regular federal corporate income tax liability, but also by allowing the credit to be refunded.

No public comments were received on this topic.

Increases in the Section 179 Expense Amount

Taxpayers may elect to immediately expense certain business assets rather than depreciating them over time. The Tax Cuts and Jobs Act of 2017 amends Internal Revenue Code section 179, to increase the deduction from \$500,000 to \$1 million and the deduction phase-out from \$2 million to \$2.5 million.

No public comments were received on this topic.

Changes to the Net Operating Loss Deduction

The Tax Cuts and Jobs Act of 2017 amends Internal Revenue Code section 172 to eliminate the two-year net operating loss carryback for most taxpayers, extend the carryforward period indefinitely, and limit the amount of net operating loss deduction that may be claimed each year to 80% of income.

No public comments were received on this topic.

Bonus Depreciation

The Tax Cuts and Jobs Act of 2017 extends and modifies the additional first-year bonus depreciation deduction through 2026 for most property acquired and placed in service after September 27, 2017. The 50% allowance is increased to 100% for property placed in service before January 1, 2023. After December 31, 2022, the 100% allowance is reduced by 20% per calendar year and eliminated in 2027.

No public comments were received on this topic.

Repeal of the Deduction for Domestic Production Activities

Internal Revenue Code section 199 provided a reduced tax rate for income from certain domestic production activities. The Tax Cuts and Jobs Act of 2017 repeals the domestic production activities deduction for taxable years beginning after December 31, 2017.

No public comments were received on this topic.

BEAT (Base Erosion Anti-Abuse Tax)

The Tax Cuts and Jobs Act of 2017 creates a new base erosion and anti-abuse tax (BEAT) in Internal Revenue Code section 59A, which is a new minimum tax on large corporations with significant base erosion payments to related foreign parties. The BEAT tax is assessed in addition to the regular federal income tax and is calculated on payments made to related entities.

No public comments were received on this topic.

Amortization of Research and Experimental Expenditures

The Tax Cuts and Jobs Act of 2017 eliminates the current deduction for Internal Revenue Code section 174 expenditures, and requires all domestic research expenditures to be amortized over a minimum of five years and for all foreign research expenditures to be amortized over a minimum of fifteen years. The Research and Development Credit is not affected by the Act.

No public comments were received on this topic.

Deduction for Dividends Received from Foreign Corporations

The Tax Cuts and Jobs Act of 2017 provides in Internal Revenue Code section 245A that a U.S. corporation that is 10% or more owner of a foreign corporation may claim a 100% dividends-received deduction for the foreign source portion of dividends received from those foreign corporation. The foreign dividends-received deduction is limited to domestic corporations (not including Real Estate Investment Trusts or Regulated Investment Companies) and may not be included in the computation of the foreign tax credit.

No public comments were received on this topic.

Deduction for Foreign Derived Intangible Income

The Tax Cuts and Jobs Act of 2017 creates a new provision in Internal Revenue Code section 250 that gives domestic corporations reduced rates of U.S. income tax on their foreign-derived intangible income. It provides a lower effective tax rate on high-returns related to foreign sales. The calculation is similar to GILTI in that returns in excess of 10% of fixed assets form the basis of the calculation.

This is achieved by providing domestic corporations a deduction against foreign-derived intangible income (subject to certain limitations) of 37.5% initially, reduced to 21.875% for tax years beginning after 2025. At a 21% corporate tax rate, the deduction results in effective tax rates of 13.125% and 16.40625%, respectively. Internal Revenue Code section 250 also provides a subtraction of 50% of GILTI and for 50% of Internal Revenue Code section 78 dividends.

No public comments were received on this topic.

Changes to the Treatment of Capital Contributions

The Tax Cuts and Jobs Act of 2017 amends Internal Revenue Code section 118 to provide that certain federal, state, and local incentives used to attract companies are treated as current taxable income to those businesses, rather than deferred capital contributions.

Diann Smith, representing STAR Partnership, provided comments on this topic.

The public was asked if anyone would like to provide comments on issues not presented by the Department. Diann Smith, representing STAR Partnership, suggested that the Department should consider the issue of decoupling from the federal law on the topic of FDIC premiums being taxed by the federal government.

The Department thanked the public for participating in the meeting and for sharing comments. It was announced that another meeting on this project would be held later this year and that a transcript of the meeting would be posted on the Department's website. The public was invited to share any additional comments after the meeting by submitting them to the Corporate Income Tax Review webpage.