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New Jersey Tax Court Rules Undistributed Foreign Earnings of CFC Are Not Taxable Dividends

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A recent decision by the New Jersey Tax Court held that while taxpayers were required to report undistributed income from "deemed repatriation dividends" on their federal tax returns, they were not required to report that undistributed income on their state income returns.

In *Amin*, the taxpayers reported Subpart F foreign income under IRC § 965 on their 2017 federal income tax return, but did not report such income on their New Jersey resident income tax return. [*Amin v. Div. of Taxation*, N.J. Tax Ct., Dkt. No. 007430-2022, 12/31/2024]

As background, in 2017, the Federal Tax Cuts and Jobs Act (TCJA) amended certain provisions of Subpart F, including IRC § 965(a). The amended provision imposed a one-time tax on a "deemed" distribution of deferred foreign earnings.

New Jersey guidance to address the TCJA required that repatriated dividends reported under IRC § 965 also be included in New Jersey gross income in the same tax years and in the same amount as reported for federal purposes.

However, New Jersey Gross Income Tax (GIT) statute consists of specified categories of income, including dividends. The statutory definition of dividends required a distribution in cash or property out of accumulated earnings and profits. [N.J. Rev. Stat. § 54A:5-1(f)]

In *Amin*, the Division of Taxation argued the repatriation income required for federal tax under IRC § 965 is considered as deemed dividend income and therefore taxable under the GIT statute. The taxpayers contended that IRC § 965 income is not a specified category of taxable income under GIT statute.

In ruling for the taxpayer, the *Amin* court recognized that the plain language of the statute requires there be a "distribution" of cash or kind, and a common sense meaning is that a "distribution" is an actual payment or transfer of money or property. The court's opinion analyzed the legislative history and other statutory language concerning deemed or undistributed amounts, noting that the legislature includes such language when it intends. Also, when IRC § 965 was enacted, the legislature promptly amended certain provisions of the Corporation Business Tax (CBT) Act but made no amendments to the GIT Act to incorporate treatment of IRC § 965.

This was satisfactory evidence to the court that IRC § 965 foreign income is not includable as dividends in New Jersey state tax filings, under the plain meaning of the GIT statute.

This decision comes on the heels of a Nebraska Supreme Court decision [*Precision Castparts Corp. v. Neb. Dept. of Rev.*, 10 NW3d 707 (2024)] that ruled an IRC § 965 foreign income was not a deemed dividend, but rather, pass-through income as determined by the U.S. Supreme Court in *Moore v. United States*, 144 S.Ct. 1680.

What this means to you

As federal tax law changes, taxpayers may benefit from deeper analysis of proper state treatment, regardless of what guidance a state's Department of Revenue provides. Following Department guidance will reduce risk but may result in increased tax liabilities and missed opportunities to take advantage of tax deductions.

Contact us

This case is a reminder that a state-by-state determination is often necessary to properly address federal changes, and taxpayers need to carefully understand those state implications in preparing and filing their returns. Please reach out to Smitha Chintamaneni, Bill Schenkelberg, or a member of the Husch Blackwell's State & Local Taxation (SaLT) team for further information.