

GIL 24-18-1 Income Tax: Section 965 Transition Tax for Tax Year 2017

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December 21, 2018

Dear XXXX,

This guidance is in response to several inquiries regarding Nebraska's treatment of Section 965 repatriation income. Based on the information provided in those requests we are providing this General Information Letter (GIL).

GILs address general questions; provide analysis of issues; and direct taxpayer to the Nebraska statutes, Nebraska Department of Revenue (Department) regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current Department policy, and taxpayer may rely on the Department to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs at revenue.nebraska.gov that may be helpful to you.

The Tax Cuts and Jobs Act (TCJA), enacted in 2017, amended section 965 of the Internal Revenue Code. The amendment required taxpayers to include in income an amount (section 965(a) inclusion amount) based on the accumulated post-1986 deferred foreign income of certain foreign corporations that they own either directly or indirectly through other entities. Other taxpayers may have inclusions in income under section 965(a) due to ownership of deferred foreign income corporations (DFICs) through U.S. shareholder pass-through entities. Section 965 also allows for a deduction (965(c) deduction).

Nebraska law conforms to the IRC section 965 provisions, except the elections to pay the tax in installments or to defer the tax.

IRC § 965(a) Inclusion Income on Nebraska Returns.

Any 965(a) income included in the taxpayer's federal return must also be included in the corresponding Nebraska return. Report the 965(a) income on the appropriate lines of the Nebraska returns as follows:

C corporations: Line 8, Nebraska Schedule A, Form 1120N.

S corporations: Line 6, Nebraska Schedule A, Form 1120-SN.

Partnerships: Line 7, Nebraska Schedule A, Form 1065N.

Individuals: An individual should not modify the federal adjusted gross income (AGI) reported to the IRS. Nebraska taxation begins with federal AGI, which includes the inclusion amount.

IRC § 965(c) deduction on Nebraska Returns.

Any 965(c) deduction allowed on the taxpayer's federal return may also be deducted on the corresponding Nebraska return. The taxpayer must attach a copy of the IRC 965 Transition Tax Statement to the Nebraska return when filed. Report the 965(c) deduction on the appropriate Nebraska returns as follows:

C corporations: Line 18, Nebraska Schedule A, Form 1120N.

S corporations: Line 16, Nebraska Schedule A, Form 1120-SN.

Partnerships: Line 17, Nebraska Schedule A, Form 1065N.

Individuals: An individual cannot modify the federal AGI reported to the IRS. Nebraska taxation begins with federal AGI, which includes the deduction amount.

Foreign Dividends Deduction on Nebraska Returns.

Nebraska law allows a deduction from federal taxable income and federal adjusted gross income, to the extent so included, for any dividends treated as foreign dividend under the IRC and related Treasury Regulations ([Neb. Rev. Stat. § 77-2716\(5\)](#)). It is the Department's position that the net 965 inclusion income (section 965(a) inclusion – section 965(c) deduction) is not a foreign dividend. A taxpayer deducting any part of the net section 965 income as a foreign dividend must support the deduction with a legal analysis supporting its contention that the net section 965 income is treated as a foreign dividend under the IRC and related Treasury Regulations.

For the Tax Commissioner

Sincerely,

Tom Milburn
Revenue Tax Specialist
Nebraska Department of Revenue