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MULTISTATE INCOME/FRANCHISE TAX

Illinois fiscal year 2022 state budget highlights

Tax Alert

Overview

On June 1, 2021, the Illinois Legislature approved Senate Bill 2017 (the "Budget Implementation Bill"), which is expected to be signed into law by Governor Pritzker. The Budget Implementation Bill contains amendments to Illinois tax law including: a $100,000 limitation on the net loss deduction for corporations, decoupling from federal bonus depreciation, elimination of the phase out of the franchise tax, addback of Internal Revenue Code (IRC) section 250 GILTI (global intangible low-taxed income) deduction, section 243(e), and section 245A(a) dividends, and exclusion of IRC section 1248 and section 245(a) from the Illinois dividend received deduction.

This Tax Alert summarizes some of the significant Illinois tax law changes included in the Budget Implementation Bill.

Corporate net loss deduction limitation

The Budget Implementation Bill reinstates the $100,000 limitation on the use of a net loss deduction ("NLD") for taxable years ending on or after December 31, 2021 and prior to December 31, 2024. This limitation only applies to C corporations. Additional carryforward of the NLD may be allowed if the NLD could have been utilized in a year the NLD was limited.

Decoupling from federal bonus depreciation

The Budget Implementation Bill decouples from all federal bonus depreciation allowance including 100% bonus depreciation and all future applicable bonus depreciation percertages under IRC section 168(k) for tax years ending on or after December 31, 2021.

Elimination of the phase-out of the corporation franchise tax

The Budget Implementation Bill removes provisions related to the phasing out of the franchise tax, which would have been phased out by December 31, 2025. An exemption of the first $1,000 liability is still applicable for tax years beginning on or after January 1, 2021.

GILTI and other foreign dividend related changes

The Budget Implementation Bill amends several provisions related to foreign dividends for tax years ending on or after June 30, 2021.

- **Addback of IRC section 250(a)(1)(B)(i):** The Budget Implementation Bill requires an addback for the special 50% deduction allowed under IRC section 250(a)(1)(B) for GILTI income. Illinois allows a deduction for subpart F income, including GILTI. The Illinois Department of Revenue's position was that the deduction for subpart F income was limited to the net GILTI after the IRC section 250 deduction. This law change clarifies that taxpayers do not get a deduction for 150% of GILTI.

- **Addback of IRC section 243(e) and section 245A(a)**: The Budget Implementation Bill requires an addback for the deductions allowed under IRC section 243(e), which treats certain dividends from earnings and profits when a foreign corporation was treated as a domestic corporation as domestic dividends, and section 245A(a), which allows a 100% deduction for dividends received from certain foreign corporations owned 10% or more. However, the Illinois foreign dividend received deduction ("foreign DRD") will still be applicable using the ownership percentages under IRC section 243. This law change clarifies that taxpayers do not get a double deduction for these dividends.

- **IRC section 1248 excluded from the Illinois foreign DRD**: The Budget Implementation Bill no longer allows a dividend received deduction for the gain recharacterized under IRC section 1248, which recharacterizes a portion of the gain as a dividend when a U.S. corporation sells its stake in certain foreign corporations owned 10% or more.

- **IRC section 245(a) excluded from the Illinois foreign DRD:** The Budget Implementation Bill provides that an Illinois foreign DRD is not allowed for dividends for which a deduction is allowed federally under IRC section 245(a). This law change clarifies that taxpayers do not get a double deduction for these dividends.

Other tax provisions

The Budget Implementation Bill amends and extends other Illinois tax provisions:

- **Credits**: the following tax credits are extended through 2026:
  - Affordable housing donation tax credit
  - Angel investment tax credit
  - River edge historic redevelopment tax credit
  - Live theater tax credit

- **Sales Tax**
  - Sales tax exemption for feminine hygiene products
  - Sales tax rate decrease to 1% on food prepared for immediate consumption and transferred to residents by entities licensed under the Assisted Living and Shared Housing Act and an entity that holds a permit issued pursuant to the Life Care Facilities

- **Property Tax**: modification of the method for valuation of supportive living facilities.

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