
State corporate tax responses to federal tax reform

March 13, 2018

In brief

In the few months following the December 22, 2017, passage of Public Law 115-97, the [tax reform reconciliation act](#), states have responded in a variety of ways to changes in the Internal Revenue Code that impact their state tax codes. Many states have introduced bills - some of which have already been enacted - that address these changes.

The following summaries of select state legislation provide insight into the vast array of options states may choose to implement when addressing conformity to federal tax reform. State reactions thus far have included: adopting certain reform provisions and decoupling from others, considering the impact to the 2017 tax year and leaving 2018 matters for another time, adopting in full all tax reform provisions, proposing a corporate tax surcharge to share with “ordinary taxpayers” the economic gains of tax reform, and other unique treatments.

We will continue to track changes and report major developments as they occur in the months ahead.

In detail

Enacted legislation

Georgia - Selective adoption

Enacted on March 2, 2018, [H.B. 918](#) updates, for taxable years beginning on or after January 1, 2017, the state’s general conformity to the Internal Revenue Code from January 1, 2017, to February 9, 2018. Accordingly, the state generally adopts changes imposed by P.L. 115-97, but for specific modifications.

Some of these modifications include:

- decoupling from IRC Section 118 changes enacted by P.L. 115-97
 - decoupling from IRC Section 163(j) changes enacted by P.L. 115-97
 - decoupling from IRC Section 168(k)ⁱ
 - providing that IRC Section 951A GILTI income does not qualify for the state’s foreign dividend received deduction
 - stating that the IRC Section 250 deduction applies “to the extent the same income was included in Georgia taxable income”
 - providing that the “deduction, exclusion, or subtraction provided by Section 245A, Section 965, or any other section of the Internal Revenue Code shall not apply to the extent income has been subtracted pursuant to” the state’s dividend received deduction.
- Additionally, H.B. 918 notes that the state conforms to the 80% limitation on NOLs provided under IRC Section 172.

Finally, effective for taxable years beginning on or after January 1, 2019, the corporate income tax rate is reduced from 6.0% to 5.75%.

Idaho - Decoupling for now, but addressing Section 965

Enacted on February 9, 2018, and applicable for taxable years beginning on or after January 1, 2017, [H.B. 355](#) updates conformity to the Internal Revenue Code from January 1, 2017, to December 21, 2017. This updated conformity generally would not include changes under P.L. 115-97 (which was enacted on December 22, 2017).

However, H.B. 355 provides that Internal Revenue Code Section 965 is to be applied as in effect on December 31, 2017 (although the intent may be to address only provisions that impact the 2017 tax year, note that depending on the fiscal year of the impacted CFCs, the Section 965 income inclusion could impact a taxpayer's 2018 tax year).

Furthermore, H.B. 355 provides an addition modification for the amount deducted under Section 965.

The Idaho legislature is expected to address conformity to other P.L. 115-97 provisions in a subsequent bill.

Virginia - Addressing 2017

Enacted on February 23, 2018, [H.B. 154](#), advances IRC conformity from December 31, 2016, to February 9, 2018. For taxable years beginning after December 31, 2016, and before January 1, 2018, such conformity includes any provision that affects the computation of federal taxable income of corporations. For tax years beginning on or after January 1, 2018, such conformity does not adopt changes made by P.L. 115-97.

The Virginia legislature is expected to address 2018 tax year conformity in a subsequent bill.

West Virginia - General conformity

Enacted on February 21, 2018, [H.B. 4135](#) adopts federal income tax law changes made "after December 31, 2016, but prior to January 1, 2018." This would include adoption of P.L. 115-97, which was enacted on December 22, 2017. Changes are effective "retroactive to the extent allowable under federal income tax law."

Accordingly, absent specific conflicting provisions in West Virginia law, the state should adopt tax reform provisions of P.L. 115-97.

Select proposed legislation

Oregon - Connecting tax haven repeal to tax reform

Oregon's current conformity to the Internal Revenue Code provides a fixed date of December 31, 2016, and an alternative rolling standard for IRC provisions "if related to the definition of taxable income." Accordingly, Oregon is typically viewed as a rolling conformity state for purposes of adopting federal tax reform provisions.

Passed by the legislature and with the governor for signature, [S.B. 1529](#) would update conformity to December 31, 2017. Although, as noted above, the state is generally treated as a rolling conformity state for tax reform purposes.

S.B. 1529 would create a tax addition modification for "amounts deducted for income repatriated, deemed or otherwise, under section 965 of the Internal Revenue Code," applicable to tax years beginning on or after January 1, 2017. Additionally, though not expressed in the bill, existing law suggests the Section 965 income

inclusion amount may qualify for the state's 80% dividends received deduction.

S.B. 1529 would also create a credit equal to the lesser of: (1) the amount of Oregon tax attributable to 965 income for tax years beginning on or after January 1, 2017, and before January 1, 2018, and (2) total tax attributable to "the addition required under ORS 317.716 [tax havens] and imposed for all tax years beginning on or after January 1, 2014, and before January 1, 2017."

Accordingly, it appears that the full amount of Section 965 income would be included in Oregon taxable income without application of the Section 965(c) deduction. However, 80% of such amount may be subject to the state's dividend received deduction. A taxpayer may receive a corporate income tax credit for the tax relating to the remaining 20% of Section 965 income, but only to the extent of the tax paid in prior years pursuant to the state's tax haven statute.

Applicable to tax years beginning on or after January 1, 2017, Oregon's tax haven provisions are repealed.

Indiana

As amended on February 27, 2018, [S.B. 242](#) would adopt the Internal Revenue Code as of February 11, 2018 effective for any taxable year that began before February 11, 2018. S.B. 242 would also:

- for the 2017 and 2018 tax years, create an addition modification for Section 965 reductions
- create an addition modification for deductions under 250(a)(1)(B)(ii), attributable to GILTI
- add an amount equal to the deduction for qualified business income that was claimed by the

taxpayer for the taxable year under Section 199A

- adopt IRC Section 163(j) and if the computation of the limitation under Section 163(j) of the Internal Revenue Code is determined for a federal affiliated group as opposed to being determined on an entity by entity basis, any interest allowed or disallowed as a deduction for a taxpayer is the amount actually deducted by or disallowed for that taxpayer, even if the taxpayer may have otherwise been permitted an interest deduction or been disallowed an interest deduction without regard to the affiliated group
- for a taxable year in which a taxpayer is required to include income as a result of Section 965, receipts from income that is included in federal adjusted gross income or federal taxable income as a result of Sections 951A and 965 of the Internal Revenue Code shall be considered dividends from investments and shall be included in the sales factor in the taxable year in which the income is included in the taxpayer's federal adjusted gross income or federal taxable income, regardless of the taxable year in which the money or property was actually received and
- define foreign source dividend as the gross amount included under 965 and the amount in federal taxable income under 951A.

S.B. 242 passed the House on March 5, 2018, and is with the Senate for concurrence in the House amendments. On March 6, 2018, the Senate dissented from House amendments.

Minnesota

Introduced on February 22, 2018, [H.F. 2942](#) would update conformity to the Internal Revenue code to December 31, 2017. The bill provides that changes apply to the same taxable years as applicable for federal purposes “including any provisions that are retroactive to taxable years beginning after December 31, 2016.”

The bill would also, effective for taxable years beginning after December 31, 2016:

- remove the existing addition modification for IRC Section 965
- create an addition modification for the Section 965(c) deduction
- provide that for a taxpayer electing under IRC Section 965(h) to pay the federal toll charge in eight annual installments, the Section 965(c) deduction addback “must be applied ratably to the same tax periods and be calculated using the same percentages that are used to determine the payments of federal tax on the deferred foreign income under section 965(h) of the Internal Revenue Code for the tax period.”

For taxable years beginning after December 31, 2017, H.F. 2942 would:

- require an addition modification relating to IRC Section 199A
- reduce the addition modification for special deductions by “the amount of the deduction under section 245A of the Internal Revenue Code that represents amounts included in federal taxable income in a prior taxable year under section 965 of the Internal Revenue Code”
- provide that the 80% net operating loss limitation does not apply to corporate taxpayers.

H.F. 2942 was referred to the Property Tax and Local Government Finance Division on February 23, 2018.

New York

On February 15, 2018, New York’s budget proposal was [amended to propose](#), effective for tax years beginning on or after January 1, 2017:

- no deduction or modification for the IRC Section 965(c) deduction
- an expansion of the definition of “exempt CFC income” to include income under IRC Section 951(a) via Section 965(a) received from a corporation that is not included in a combined report with the taxpayer (without regard to the Section 965(c) deduction) and
- to limit the entire net income exclusion for amounts treated as dividends under IRC Section 78 to the extent these dividends are not included in the new federal deduction under IRC Section 250.

Additionally, for tax years beginning on or after January 1, 2017, and before January 1, 2018, the proposal would exempt from the state’s estimated tax understatement penalty:

- disallowed interest expenses attributed to exempt CFC income or
- the 40% reduction of such exempt CFC income in lieu of interest attribution (i.e., the safe harbor election).

Maryland

Introduced on February 9, 2018, [H.B. 1322](#) would create a subtraction for “dividends received by a corporation from a controlled foreign corporation if the dividends are included in federal taxable income as part of a repatriation holiday under § 965 of

the Internal Revenue Code or other similar provision of the Internal Revenue Code.” The change would be applicable to all taxable years beginning after December 31, 2017.

Further, the bill provides that “it is the intent of the General Assembly that, if federal legislation is enacted that provides for favorable income tax treatment for corporate profits from outside the country that are brought back into the United States, the profits may not be taxable under the Maryland corporate income tax.”

A hearing on the bill was held on March 6, 2018.

Florida

Passed by the legislature and with the governor for signature, [H.B. 7093](#) would update federal conformity to January 1, 2018 and continue the state’s decoupling from Section 168(k).

The bill provides that P.L. 115-97 “will have significant effects on the state corporate income tax and on corporate taxpayers when it is fully implemented.” By February 1, 2019, the Department must submit a report to the governor and certain members of the legislature providing, among other things, (1) a comprehensive discussion of issues that will have an effect on the corporate income tax and (2) options for tax changes.

Pennsylvania

Pennsylvania [Corporation Tax Bulletin 2017-02](#), issued December 22, 2017 provides that the 100% depreciation for qualified property under IRC Section 168(k) is not applicable.

Introduced on January 22, 2018, [H.B. 2017](#), is intended to, according to the bill’s sponsor, “[reverse the provisions of Bulletin 2017-02](#)” and [would allow deductions](#) for assets placed in service on or after September 28, 2017. H.B.

2017 was “laid on the table” on February 6, 2018.

A similar bill [H.B. 1056](#), would allow for full expensing. The bill was referred to the finance committee on February 22, 2018.

California - 10% corporate surtax

Tangentially related to tax reform is the Assembly Constitutional Amendment [ACA-22, Middle Class Fiscal Relief Act](#), which would impose a 10% surcharge on qualified corporate net income over \$1,000,000 effective for taxable years beginning on or after January 1, 2018.

As stated in ACA-22, the amendment’s purpose is “to share with ordinary California taxpayers the economic gains provided by federal income tax cuts for corporations with over one million dollars (\$1,000,000) in net income.”

ACA-22 has not progressed since its January 18, 2018, introduction.

Other proposals

- **Connecticut.** [S.B. 11](#) proposes: (1) a new revenue-neutral tax on pass-through entities, offset by a personal income tax credit, intended to, as [described](#) by the governor, “prevent Connecticut’s small business owners from being targeted by the federal tax law” and (2) decoupling from full expensing.

- **Georgia.** [SB 328](#) would provide a subtraction for income specified in Section 951A of the Internal Revenue Code.

- **Illinois.** [S.B. 3152](#) would create an addition modification for amounts allowed as a deduction for foreign-derived intangible income under Section 250(a)(1)(A) of the Internal Revenue Code, applicable

for taxable years beginning after December 31, 2017.

- **Indiana.** [S.B. 242](#) would, for the 2017 and 2018 tax years, create an addition modification for Section 965 reductions.
- **Maine.** [S.P. 612](#) would update Internal Revenue Code conformity to December 31, 2017.
- **Michigan.** [H.B. 5420](#) would update the definition of the Internal Revenue Code to mean “the United States internal revenue code of 1986 in effect on January 1, 2018 or, at the option of the taxpayer, in effect for the tax year.”
- **Tennessee.** [H.B. 1689](#) and [S.B. 1672](#), would, effective for tax years beginning after July 1, 2018, recouple Tennessee’s corporate income tax to follow federal bonus depreciation under IRC 168(k).
- **Utah.** [S.B. 244](#) would allow a corporation to pay taxes on Section 965 in installments under certain circumstances.

The takeaway

There has been a considerable amount of state activity in the relatively short time since the enactment of federal tax reform. We will continue to track changes and report major developments as they occur in the months ahead.

Let's talk

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ⁱ Georgia decoupled from Section 168(k) prior to the enactment of H.B. 918. Additionally, Georgia previously adopted the following provisions; however, for the 2017 tax year H.B. 918 provides that the state also decouples from the following:
Section 168(k)(2)(A)(i) (the definition of qualified property),
Section 168(k)(2)(D)(i) (exceptions to the definition of qualified property)
Section 168(k)(2)(E) (special rules for qualified property).

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