

GIL 24-19-3 Income Tax: Global Intangible Low-Taxed Income and Foreign-Derived Intangible Income

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December 10, 2019

Dear XXXX,

This guidance document is in response to several inquiries regarding Nebraska's treatment of Global Intangible Low-Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII).

Based on the information provided in those inquiries, we are providing this General Information Letter (GIL). GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, DOR regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current DOR policy, and taxpayers may rely on DOR to follow the principles or procedures described in a GIL until it is rescinded or superseded.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 that may be helpful to you at revenue.nebraska.gov.

The Tax Cuts and Jobs Act (TCJA), enacted in 2017, created sections 951A and 250 of the Internal Revenue Code (IRC). Section 951A requires taxpayers who are United States shareholders of a controlled foreign corporation (CFC) to include the taxpayer's global intangible low-taxed income (GILTI) in the taxpayer's gross income. GILTI is calculated as the taxpayer's net CFC tested income over the taxpayer's net deemed tangible income return. Section 250(a) allows domestic corporations to claim a deduction against a portion of GILTI from its gross income. Section 250(a) also allows a deduction from gross income of a portion of a domestic corporation's FDII. Nebraska law conforms to the IRC sections 951A and 250(a) provisions.

United States shareholders of CFCs must include GILTI in their gross income for each taxable year and report GILTI on the applicable federal return. Federal taxable income, as adjusted, for corporate entities and federal adjusted gross income for individuals are the Nebraska tax bases. Because GILTI is included in federal taxable income, as adjusted, and federal adjusted gross income, GILTI is also included in the Nebraska taxable income and must be reported on the appropriate Nebraska return. For domestic corporations, the federal taxable income amount includes the IRC section 250(a) deduction against GILTI and FDII deduction as reported on the U.S. Corporation Income Tax Return, Form 1120.

IRC Sections 951A and 250(a) on the Nebraska Return

Any IRC section 951A income included in the taxpayer's federal return as federal taxable income, as adjusted, for corporations or federal adjusted gross income for individuals must also be included in the Nebraska return. For domestic corporations, the IRC section 250(a) GILTI and FDII deductions are included in federal taxable income and are included on the Nebraska return as well.

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 or deemed dividends treated as foreign dividends under the IRC and related Treasury Regulations ([Neb. Rev. Stat. § 77-2716\(5\)](#)). Examination of the IRC and related Treasury Regulations establish that GILTI is not a foreign dividend. Additionally, GILTI is not included in Subpart F income. GILTI is calculated under IRC § 951A and IRC § 951A is not added to IRC § 952, which defines Subpart F income.

Apportionment

If the corporate taxpayer is taxable in both Nebraska and one or more other states, the income of the corporate taxpayer must be apportioned to Nebraska based on the Nebraska receipts as compared to all receipts as provided by [Neb. Rev. Stat. §§ 77-2734.05 to 77-2734.15](#). The denominator of the sales factor includes the entity's share of the IRC section 951A income reported on the federal return. The amount included in the numerator of the sales factor is governed by [Neb. Rev. Stat. § 77-2734.14\(3\)\(d\)](#). Income recognized under IRC section 951A is generated as a result of an ownership interest in a controlled foreign corporation. As such, for purposes of sales factor representation, this income is characterized as investment income under the relevant Nebraska Statutes and it is sourced to the location where the entity's investment, management, and record keeping activities occur. The presumption is that these activities occur at the entity's commercial domicile. If Nebraska is the entity's commercial domicile, then the entity's share of the IRC section 951A income must be included in the numerator of its sales factor unless the entity provides sufficient evidence to rebut the presumption that the relevant activities occur at its commercial domicile. If another state is the entity's commercial domicile, none of the IRC section 951A income should be included in the numerator of its sales factor unless it conducts the relevant activities (i.e., investment, management, and record keeping) in Nebraska.

For the Tax Commissioner

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