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Kentucky Technical Advice Memorandum
KY-TAM-18-02

SUBJECT: Global Intangible Low-Taxed Income

EFFECTIVE DATE: Applies to taxable years beginning on or after January 1, 2018

SUPERSEDES: N/A

REFERENCE: [KRS 141.010](#)
[KRS 141.017](#)
[KRS 141.039](#)
[KRS 141.0401](#)
[103 KAR 16:060](#)

AUTHORITY: [KRS Chapter 13A](#)
[KRS 131.130 \(8\)](#)

SCOPE: The purpose of a Technical Advice Memorandum ("TAM") is to provide direction to the public and to Department personnel. It is issued to apply principles of law to a set of facts or general category of taxpayers. The Kentucky Department of Revenue ("KDOR"), in its discretion, may retroactively withdraw, revoke, or modify any TAM including, but not limited to, if there was a change in the applicable statute(s), regulation(s), case law or other DOR guidance; or if the TAM was issued in error. A TAM does not constitute a final ruling, order or determination of the DOR, and cannot be appealed.

I. Issue/Question(s)

What is Kentucky's position on the treatment of Global Intangible Low-Taxed Income for Kentucky income tax purposes?

II. Law

KRS 141.010 (14)

"Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2017, including the provisions contained in Pub. L. No. 115-97, exclusive of any amendments made

subsequent to that date, other than amendments that extend provisions in effect on December 31, 2017, that would otherwise terminate.

KRS 141.017 (1) (b)

Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter shall not be allowed.

KRS 141.039

For taxable years beginning on or after January 1, 2018, in the case of corporations:

- (1) Gross income shall be calculated by adjusting federal gross income as defined in Section 61 of the Internal Revenue Code as follows:
 - (b) Exclude all dividend income.

- (2) Net income shall be calculated by subtracting from gross income:
 - (c) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:
 - (4) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once.

KRS 141.0401 (1) (a)

“Kentucky gross receipts” means an amount equal to computation of the numerator of the apportionment fraction under KRS 141.120, any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share Kentucky gross receipts of all wholly or partially owned limited liability pass-through entities, including all layers of a multi-layered pass-through structure.

103 KAR 16:060 §7

KRS 141.039(2)(4) requires that any deduction allowed under Chapter 1 of the Internal Revenue Code shall be reduced by expenses directly or indirectly related to nontaxable or non-apportionable income.¹

III. Facts/Discussion

Kentucky has updated its Internal Revenue Code (“IRC”) conformity date to apply to the IRC as in effect on December 31, 2017, including the provisions contained in the Pub. L. No. 115-97.

As part of the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, (the “TCJA”), Global Intangible Low-Taxed Income (“GILTI”) provisions were enacted under IRC § 951A. Under IRC § 951A, a U.S. shareholder of a controlled foreign corporation (“CFC”) must include in its gross income its

¹ As of publication of this guidance, the Regulation references KRS 141.010(13)(d) as the statutory authority for a related expense adjustment. House Bill 487 created a new section of Chapter 141 for the computation of corporation income. The Department is in the process of updating the Regulations.

GILTI in a manner similar to Subpart F income. A corporation with GILTI is allowed to claim a deduction against a portion of such income on its federal return under IRC § 250.

IV. Conclusion

KRS 141.039(1)(b) excludes dividend income in calculating the gross income for Kentucky income tax purposes. Kentucky treats Subpart F income as dividend income. For federal purposes, GILTI is treated similarly to Subpart F income, therefore, GILTI is considered nontaxable income for Kentucky income tax purposes.

Since GILTI is considered nontaxable income, Kentucky will not allow the IRC § 250 deduction. See KRS 141.017(1)(b). In addition, any expenses related to GILTI must be added back per KRS 141.039(2)(c)(4). If the actual expenses cannot be determined, 103 KAR 16:060 § 7 provides for various estimation methods that may be used to calculate the amount of expenses related to the nontaxable income.

Finally, GILTI must not be included in the computation of the sales factor for corporate income tax purposes, or in the KRS 141.0401(1)(a) calculation of gross receipts for the limited liability entity tax which is based on the sales factor. Kentucky does not include nontaxable income in the computation of the sales factor.

As of publication of this guidance, the Internal Revenue Service (“IRS”) has not released guidance or tax forms explaining how GILTI will be treated at the federal level. Once the IRS has released such information, specific guidance may be issued by the Department of Revenue to explain how GILTI must be reported on the Kentucky corporation income tax return.

For questions concerning this TAM, contact the Office of Tax Policy and Regulation at DORtaxpolicy@ky.gov.

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