

Enacted Wisconsin legislation provides for IRC conformity update and other tax law changes

Overview

On April 3, 2018, Governor Walker signed Assembly Bill 259,¹ (2017 Wisconsin Act 231 (Act 231)) which includes the following notable amendments to Wisconsin tax law:

- Effective for taxable years beginning after December 31, 2016, and before January 1, 2018, updates Wisconsin corporate and individual income tax conformity to the Internal Revenue Code (IRC) as amended through December 31, 2016.
- Effective for taxable years beginning after December 31, 2017, updates Wisconsin corporate and individual income tax conformity to the IRC as amended through December 31, 2017, with decoupling from certain provisions of the 2017 Tax Reform Act² (the Act).
- Updates the evidentiary standard for proving a transaction has economic substance.
- Amends the rules by which a taxpayer may be precluded from relying on past audits conducted by the Wisconsin Department of Revenue.

IRC conformity update

Act 231 amends the Wisconsin definition of the IRC for purposes of determining Wisconsin taxable income. For taxable years beginning after December 31, 2016, and before January 1, 2018, Act 231 updates Wisconsin's definition of the IRC to include federal amendments enacted on or before December 31, 2016.³ As a result, any deemed repatriation income (or associated deduction) recognized for federal tax purposes in the 2017 tax year is not an element of a taxpayer's 2017 Wisconsin tax base.

For taxable years beginning on or after January 1, 2018, Act 231 updates Wisconsin's definition of the IRC for purposes of determining Wisconsin taxable income to include federal amendments enacted on or before December 31, 2017, with specific decoupling from certain federal provisions, as outlined below.⁴

IRC § 168(k) asset expensing, and IRC § 163(j) interest deductibility limitations

Act 231 retains the current Wisconsin tax law provision decoupling from IRC § 168(k).⁵ Under the amended IRC § 168(k), taxpayers are allowed to fully deduct the costs of certain assets in determining federal taxable income for the year that those assets are placed in service for property acquired and placed in service after September 27, 2017 and before January 1, 2023. Because Wisconsin has historically decoupled from federal bonus depreciation provisions, the mechanics of Wisconsin depreciation are unchanged for taxpayers.

¹ A copy of the assembly bill is accessible [here](#).

² Pub. L. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

³ Act 231, Section 1, amending § 71.01(6)(k)1., Wis. Stats.; Act 231 Section 12, amending § 71.22(4)(k)1., Wis. Stats.; Act 231 Section 15, amending § 71.22(4m)(k)1., Wis. Stats.; Act 231 Section 23, amending § 71.34(1g)(k)1., Wis. Stats.; Act 231, Section 26, amending § 71.42(2)(k)1., Wis. Stats.

⁴ Act 231, Section 3, creating § 71.01(6)(L)1., Wis. Stats.; Act 231 Section 14, creating § 71.22(4)(L)1., Wis. Stats.; Act 231 Section 17, creating § 71.22(4m)(L)1., Wis. Stats.; Act 231 Section 25, creating § 71.34(1g)(L)1., Wis. Stats.; Act 231, Section 28, creating § 71.42(2)(L)1., Wis. Stats.

⁵ Act 231, Section 3, creating § 71.01(6)(L)2., Wis. Stats.; Act 231 Section 14, creating § 71.22(4)(L)2. Wis. Stats.; Act 231 Section 17, creating § 71.22(4m)2., Wis. Stats.; Act 231 Section 25, creating § 71.34(1g)(L)2., Wis. Stats.; Act 231, Section 28, creating § 71.42(2)(L)2., Wis. Stats.

The new federal interest deductibility limitations provided by IRC § 163(j),⁶ as amended by the Act, are specifically excluded from the calculation of Wisconsin taxable income under Act 231. The federal amendments to IRC § 163(j) generally limit the deductibility of interest to no more than net interest income plus 30% of adjusted taxable income and allow a carryforward of disallowed business interest. Similar to the state's treatment of IRC § 168(k), Act 231 retains conformity to the pre-Act version of IRC § 163(j) for Wisconsin tax purposes.

Adoption/Decoupling from international tax provisions of the Act

Act 231 specifically decouples from the GILTI and FDII provisions of federal tax reform.⁷ Accordingly, any 951A income recognized for federal income tax purposes is specifically excluded for purposes of determining Wisconsin taxable income. To the extent that such foreign income may be subtracted as Subpart F income for federal tax purposes, Act 231 also provides that the deduction under IRC § 245A is disallowed for Wisconsin purpose and replaced with the traditional dividend received deduction provided by Wisconsin tax law; i.e., a corporation may deduct from income dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70 percent of the total combined voting stock of the payor corporation.⁸

Evidentiary standard for proving a transaction has economic substance

Act 231 changes the standard of proof a taxpayer must meet in order to establish that a transaction has economic substance for income and franchise tax purposes from a clear and convincing evidence to clear and satisfactory evidence.⁹ This amendment applies to taxable years beginning on or after January 1, 2018.¹⁰

Reliance on past audits

Effective for an audit determination issued on or after April 5, 2018,¹¹ Act 231 clarifies that a taxpayer is prohibited from relying upon a prior audit determination, regardless of when a prior audit determination was issued, to avoid liability in future audit determination under any one of the following circumstances:¹²

- The department establishes by clear and satisfactory evidence that the taxpayer provided incomplete or false information relevant to the tax issue in the prior audit determination.¹³
- The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into before April 5, 2018.¹⁴
- The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into on or after April 5, 2018 and in which the parties acknowledge that the department did not adopt the taxpayer's position on the tax issue.¹⁵

Considerations

Act 231 results in significant changes to Wisconsin's corporate income tax, continued decoupling from the full expensing of assets under IRC § 168(k), decoupling from the interest deductibility limitations under IRC § 163(j) and decoupling from the GILTI and FDII elements of federal tax reform. Taxpayers impacted by the enactment of Act 231 should consult with their Wisconsin tax advisors for further assistance.

Contacts:

⁶ *Id.*

⁷ *Id.*

⁸ Act 231, Section 21, amending § 71.26(3)(j) Wis. Stats.

⁹ Act 231, Section 11, amending § 71.10(1m)(c) Wis. Stats.; Act 231, Section 22, amending § 71.30(2m)(c) Wis. Stats.; Act 231, Section 29, amending § 71.80(1m)(c) Wis. Stats.

¹⁰ Act 231, Section 39 (1)

¹¹ Act 231, Section 39(2)

¹² Act 231, Section 33, creating § 73.16(3)(c) Wis. Stats.

¹³ Act 231, Section 33, creating § 73.16(3)(c)1. Wis. Stats.

¹⁴ Act 231, Section 33, creating § 73.16(3)(c)2. Wis. Stats.

¹⁵ Act 231, Section 33, creating § 73.16(3)(c)3. Wis. Stats.

External Multistate Tax Alert

Jeannette Thorel

Tax Managing Director

Deloitte Tax LLP, Milwaukee

+1 414 977 2618

jthorel@deloitte.com

Scott Bender

Tax Senior Manager

Deloitte Tax LLP, Milwaukee

+1 414 347 6104

sbender@deloitte.com

Michael Gordon

Tax Senior Manager

Deloitte Tax LLP, Milwaukee

+1 414 977 2666

michagordon@deloitte.com

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