

GA H.B. 918 enacted – includes IRC conformity amendment and income tax rate reductions

Overview

On March 2, 2018, Governor Nathan Deal signed House Bill 918 (H.B. 918),¹ which includes the following amendments to Georgia law:

- Reduces corporate and individual income tax rates from 6.0% to 5.75% for all taxable years beginning on or after January 1, 2019, with a potential reduction to 5.5% for all taxable years beginning on or after January 1, 2020;
- Effective for taxable years beginning on or after January 1, 2017, updates the state's corporate and individual income tax conformity to the Internal Revenue Code of 1986 (IRC) provided for in federal law enacted on or before February 9, 2018 and specifically decouples from certain provisions of the 2017 Tax Reform Act² (the Act);
- Provides that affiliated entities may apply certain assigned credits against payroll tax withholding obligations and modifies other rules related to income tax credits.

This tax alert summarizes the more significant Georgia tax law changes contained in H.B. 918, which have various effective dates as specified in the discussion that follows.

April 9, 2018 update – As a result of legislation subsequently enacted on March 26, 2018 (S.B. 328), the section of this tax alert addressing H.B. 918's specific impact on Georgia's treatment of Section 951A of the IRC has been deleted. Please see our tax alert issued on April 6, 2018 for further details on S.B. 328.

Reduction of the corporate and individual income tax rates

Effective March 2, 2018 and applicable to all taxable years beginning on or after January 1, 2019, H.B. 918 provides for a reduction in the highest corporate and individual income tax rates from 6% to 5.75%.³ The corporate and individual tax rates may further be reduced to 5.5% for taxable years beginning on or after January 1, 2020 with the passage of a joint resolution signed by the Governor and ratified by both houses of the Georgia General Assembly on or after January 13, 2020.⁴ These tax rate reductions sunset as of December 31, 2025, when the corporate and individual tax rates will revert back to 6%.⁵

IRC conformity update and decoupling from certain provisions of the federal Tax Reform Act

For taxable years beginning on or after January 1, 2017, H.B. 918 updates Georgia's definition of the IRC for purposes of determining Georgia taxable income to include federal amendments enacted on or before February 9, 2018, with specific decoupling from certain federal provisions, as outlined below.⁶

IRC § 118 contributions to capital, IRC § 168(k) asset expensing, and IRC § 163(j) interest deductibility limitations

H.B. 918 decouples from the Act's amendments to the contribution to corporate capital rules under IRC § 118.⁷ IRC § 118 historically excluded contributions to the capital of a corporation from the corporation's gross income.⁸ The amendments to IRC § 118, however, provide that certain contributions by customers and potential customers and certain contributions by government entities or civic groups to a corporation are not considered "contribution[s] to the

¹ 2018 Ga. Laws 284. A copy of the adopted law is accessible [here](#).

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

³ H.B. 918, Secs. 1-2, -4. Effective March 2, 2018 and applicable to all taxable years beginning on or after January 1, 2018, H.B. 918 doubles the standard deduction for individuals. H.B. 918, Sec. 1-7. However, on the last moment of December 31, 2025, the standard deduction amounts will revert back to their prior amounts. H.B. 918, Sec. 3-1(d).

⁴ H.B. 918, Sec. 3-1.

⁵ H.B. 918, Sec. 3-3.

⁶ H.B. 918, Sec. 1-1.

⁷ *Id.*

⁸ I.R.C. § 118(a).

capital of the taxpayer,” and thus would be includible in the corporation’s gross income.⁹ As such, H.B. 918 retains conformity to IRC § 118 for Georgia purposes as it existed *prior* to the enactment of the Act.

H.B. 918 retains the current Georgia tax law provision decoupling from IRC § 168(k).¹⁰ 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 Georgia has historically decoupled from federal bonus depreciation provisions, the mechanics of Georgia depreciation is unchanged for taxpayers.

The new federal interest deductibility limitations provided by IRC § 163(j), as amended by the Act, are specifically excluded from the calculation of Georgia taxable income under H.B. 918.¹¹ 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.¹² Similar to the state’s treatment of IRC § 118, H.B. 918 retains conformity to the pre-Act version of IRC § 163(j) for Georgia purposes.

Changes to Georgia’s Net Operating Loss (NOL) Rules and Decoupling from IRC § 172

H.B. 918 makes substantial changes to Georgia’s state NOL deduction by adopting the amendments to IRC § 172 provided by the Act. Under H.B. 918, Georgia adopts the revised federal NOL deduction and carryforward rules of IRC § 172 by limiting the deductibility of a state NOL to 80% of Georgia taxable income and providing for an unlimited carryforward period.¹³ State NOL carryback deductions may be allowed “if such carrybacks are allowed by the [IRC].”¹⁴ However, the general two-year carryback period under IRC § 172(b)(1)(A) was repealed under the Act, effectively limiting the ability of many taxpayers to carryback an NOL for federal purposes. In addition to adopting the 80% income limitation, H.B. 918 does not repeal other Georgia NOL limitations provided in prior law so taxpayers will need to consider all potential limitations in determining the applicable amount of Georgia NOL utilization.

Conformity to specific international tax provisions of the Act

With respect to the federal transition tax, H.B. 918 includes language that would prevent taxpayers from claiming multiple deductions for the same IRC § 965 income. Georgia has traditionally allowed a 100% deduction for Subpart F income and will continue to allow that deduction under H.B. 918 for IRC § 965(a) foreign income that qualifies as Subpart F income under the IRC.¹⁵ The deduction allowed under IRC § 965(c), which offsets IRC § 965(a) foreign income for federal income tax purposes, “shall not apply to the extent income has been subtracted” from Georgia taxable income as a dividend received.¹⁶ In other words, H.B. 918 prevents taxpayers from subtracting the full amount of IRC § 965(a) foreign income and also taking the deduction under IRC § 965(c). Similarly, IRC § 245A allows for a dividends received deduction for certain foreign-sourced dividends received from foreign corporations.¹⁷ To the extent that the foreign dividends may be subtracted as Subpart F income, H.B. 918 provides that the deduction under IRC § 245A is disallowed for Georgia purposes.¹⁸

Application of assigned income tax credits against payroll tax withholding obligations

For Georgia purposes, taxpayers may elect to use certain income tax credits to offset payroll tax withholding obligations by making an irrevocable election on Form IT-WH-*Notice of Intention to Claim Withholding Benefit* (Form IT-WH) and submitting the form to the Department. Effective March 2, 2018 and applicable to tax credits that are assigned in taxable years beginning on or after January 1, 2018, H.B. 918 now generally allows affiliated entities that have been assigned credits to use such credits to offset payroll withholding tax obligations;¹⁹ however, the following transferred credits may not be used as an offset: Historic Rehabilitation Credit for Historic Homes, Land Conservation Credit, Film Tax Credit, and Postproduction Film Tax Credit.²⁰ Effective March 2, 2018 and applicable to sales, mergers, acquisitions, or bankruptcies occurring in taxable years beginning on or after January 1, 2018, H.B. 918 also provides that unused income tax credits that are transferred through a sale, merger, acquisition, or bankruptcy of any

⁹ I.R.C. § 118(b).

¹⁰ H.B. 918, Sec. 1-1.

¹¹ *Id.*

¹² I.R.C. § 163(j)(2).

¹³ H.B. 918, Secs. 1-6, -8.

¹⁴ H.B. 918, Sec. 1-6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ I.R.C. § 245A.

¹⁸ H.B. 918, Sec. 1-6.

¹⁹ H.B. 918, Sec. 1-9.

²⁰ See H.B. 918, Sec. 1-9; see also O.C.G.A. §§ 48-7-29.8 (Historic Rehabilitation Credit for Historic Homes), -7-29.12 (Land Conservation Credit), -7-40.26 (Film Tax Credit), and -7-40.26A (Postproduction Film Tax Credit).

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taxpayer may be transferred and continued by such transferee and applied against the transferee's income tax liability.²¹

Considerations

H.B. 918 results in significant changes to Georgia's corporate income tax, including upcoming reductions to the income tax rate, amendments to the Georgia NOL carryforward, carryback, and utilization rules, continued decoupling from the full expensing of assets under IRC § 168(k) and decoupling from the interest deductibility limitations under IRC § 163(j). Taxpayers impacted by the enactment of H.B. 918 should consult with their Georgia tax advisors for further assistance.

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²¹ H.B. 918, Sec. 1-9.
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