

New York Enacts New Treatment of GILTI and Changes to SUT Economic Nexus Threshold

Overview

On June 24, 2019, Governor Andrew Cuomo of New York signed into law S.B. 6615.¹ Applicable for tax years beginning on or after January 1, 2019, S.B. 6615 amends the New York State's tax treatment of certain federal tax provisions enacted in the Tax Cuts and Jobs Act of 2017² (federal tax reform). Specifically, these changes affect the State's treatment of Global Intangible Low-Taxed Income³ (GILTI). S.B. 6615 also amends New York State's sales and use tax economic nexus thresholds for out-of-state vendors.

This Tax Alert summarizes the above New York State tax law changes, included in S.B. 6615. Please see [here](#) for our alert providing information the 2019-2020 Budget Act (S1509C/A2009C) (the Budget Act).⁴

Corporate Income Tax

New Law Treats 95% of IRC section 951A(a) (GILTI) Inclusion as Exempt Income under Corporation Franchise Tax

Applicable for tax years beginning on or after January 1, 2019, S.B. 6615 revises New York's treatment of certain provisions under federal tax reform for Article 9-A corporation franchise taxpayers. The new law essentially treats 95% of the Internal Revenue Code (IRC) section 951A(a) inclusion (*i.e.*, unreduced by the GILTI deduction under IRC section 250(a)(1)(B)(1)), as exempt controlled foreign corporation (CFC) income.⁵ The GILTI deduction under IRC section 250(a)(1)(B)(1) may not be taken into account in determining the taxpayer's New York taxable income.⁶

S.B. 6615 additionally provides that for New York subchapter C corporations, GILTI is not included in the numerator of the apportionment fraction (consistent with prior law changes included in the Budget Act), and 5% of the IRC section 951A(a) inclusion, unreduced by the GILTI deduction under IRC section 250(a)(1)(b)(1)), is included in the apportionment fraction denominator.⁷

For New York subchapter S corporations, the 95% exclusion generally does not apply under the S.B. 6615 amendments; similarly, GILTI is not in the numerator of the apportionment fraction (consistent with prior law changes included in the Budget Act) and there is full IRC section 951A(a) inclusion in the denominator of the apportionment fraction.⁸ As with other exempt income in New York, the 95% GILTI exclusion under S.B. 6615 is subject to New York's interest attribution rules or the 40% safe-harbor election.⁹ S.B. 6615 provides for a similar "95% GILTI exclusion rule" under New York's Article 33 franchise tax on insurance corporations.¹⁰ Similar legislation was not enacted for the New York City Business Corporation Tax, General Corporation Tax or Banking Corporation Tax.

¹ Chapter 39, Laws of 2019. A copy is accessible [here](#).

² Public Law 115-97.

³ IRC section 951A.

⁴ Chapter 59, Laws of 2019. A copy is accessible [here](#).

⁵ S06615, Part I, Section 1.

⁶ S06615, Part I, Section 2.

⁷ S06615, Part I, Section 3.

⁸ *Id.*

⁹ S06615, Part I, Section 1.

¹⁰ S06615, Part I, Section 4.

Sales and Use Taxes

New Law Increases Component of Remote Vendor Economic Nexus Threshold

S.B. 6615 also revises New York's economic nexus thresholds for out-of-state vendors (*i.e.*, including remote sellers and marketplace facilitators), requiring them to register for state sales tax purposes and collect and remit sales tax if, in the previous four sales tax quarters:

- the cumulative total of their gross receipts from sales made or facilitated of tangible personal property delivered into New York State exceeded \$500,000 (previously, \$300,000),¹¹ and
- such persons made or facilitated more than 100 sales of tangible personal property delivered in New York State (unchanged from prior law).

S.B. 6615 gives this change retroactive effect. The law amending the threshold related to vendors is applicable as of June 21, 2018, and the law amending the threshold related to marketplace facilitators is applicable as of June 1, 2019.¹²

Considerations

S.B. 6615 addresses certain changes to New York State taxes in response to federal tax reform, as well as changes to the State's economic nexus provisions. Taxpayers impacted by the enactment of S.B. 6615 should reach out to their tax advisors.

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¹¹ S06615, Part J, Section 1 for vendors and Section 2 for marketplace providers.

¹² S06615, Part J, Section 4.

External Multistate Tax Alert

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