



MULTISTATE INCOME/FRANCHISE TAX

Tennessee treatment of FDII Tax Alert

Overview

The Tennessee Department of Revenue (“Department”) recently announced a change to the state’s treatment of foreign derived intangible income (“FDII”), specifically providing that Tennessee taxpayers are entitled to the full amount of the Internal Revenue Code (“IRC”) section 250(a) deduction to which they are entitled under federal law as it relates to FDII.

Tennessee treatment of FDII

For corporations and entities taxed as corporations for federal tax purposes, Tenn. Code Ann. § 67-4-2006(a) defines net earnings as “federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247, and as adjusted by subsections (b) and (c).” Sections (b) and (c) consist of certain state modifications, such as state tax addback and bonus depreciation, among others.

Because Tennessee starts with federal taxable income before the federal NOL deduction and special deductions under IRC sections 241 and 243-247, it is logical that the IRC section 250(a)(1)(B) deduction should be allowed in the calculation of state taxable income. However, in July 2019, the Department posted [Notice #19-13](#) related to global intangible low-taxed income (GILTI) stating “[n]o deductions for Internal Revenue Code Section 250 are allowed.” Additionally, the Department noted on page 300 in its [franchise and excise tax manual](#) that Tennessee decoupled from the federal provision that allows the FDII deduction. Thus, Department administrative guidance took a contrary view to the plain language of the statute and disallowed FDII deductions for tax years beginning after December 31, 2017.

The Department recently [announced](#) that it has reviewed this issue and determined that “while Tennessee has decoupled from I.R.C. section 250 for purposes of global intangible low-taxed income (GILTI), it has not decoupled for purposes of the FDII deduction. Therefore, in computing ‘net earnings’ under Tenn. Code Ann. § 67-4-2006, taxpayers are entitled to the full amount of the I.R.C. § 250(a) deduction to which it is entitled under federal law as it relates to FDII.”

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