

New Virginia laws address federal tax reform provisions

Overview

On February 15, 2019, Governor Ralph Northam signed House Bill 2529 (H.B. 2529)¹ and Senate Bill 1372 (S.B. 1372)² (collectively, the "Bills") which include the following modifications to Virginia law:

- Updates Virginia's tax law to the Internal Revenue Code (IRC) as of December 31, 2018.
- Provides a corporate income tax subtraction for Global Intangible Low-Taxed Income (GILTI) included in federal taxable income under the provisions of the federal Tax Cuts and Jobs Act.
- Provides a corporate and individual subtraction equal to 20 percent of business interest disallowed pursuant to § 163(j) of the Internal Revenue Code.
- Increases the standard deduction for individuals for taxable years beginning on and after January 1, 2019, but before January 1, 2026, to \$4,500 for single individuals and \$9,000 for married persons (\$4,500 case of a married individual filing a separate return).
- Decouples from the overall limitation on itemized deductions for individuals under the provisions of the federal Tax Cuts and Jobs Act for taxable years beginning on and after January 1, 2019.
- Provides an individual income tax subtraction for the actual amount of real and personal property taxes not otherwise deducted solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the Internal Revenue Code for taxable years beginning on and after January 1, 2019.
- Provides a one-time special refund for individual income tax payers equal to \$110 for an individual, or \$220 for married persons filing a joint return for 2018.
- Creates a special fund for revenue raised by individual tax reform provisions dedicated to future tax reform provisions.

This Tax Alert summarizes these law changes: (1) under emergency bills effective February 15, 2019, and (2) that generally apply retroactively to tax years beginning on or after January 1, 2018, unless specified otherwise in the discussion that follows. The Bills are identical.

Update to IRC Conformity

The Bills update Virginia's conformity to the IRC to December 31, 2018. This is generally applicable retroactively to tax years beginning on or after January 1, 2018. Changes made by the federal Tax Cuts and Jobs Act, P.L. 115-97 (2017) (the "Act") may therefore also apply retroactively to January 1, 2018. An example of this is the changes to Net Operating Losses (NOLs) under IRC § 172. Because Virginia generally conforms to federal taxable income, and applies the rules under IRC § 172 in determining net operating losses available in Virginia, the changes to IRC § 172 made by the Act, such as limiting NOLs to 80% of taxable income, or repealing NOL carrybacks, also apply in Virginia retroactively to years beginning on or after January 1, 2018.

Subtraction for GILTI

The Bills provide a corporate income tax subtraction for any GILTI included in federal taxable income by the operation of IRC § 951A as enacted by the Act, for taxable years beginning on and after January 1, 2018. No subtraction is provided for individual taxpayers. The Bills do not address the deductions allowed under IRC § 250 under that Act, but by updating conformity to the IRC as of December 31, 2018, presumably such deductions are allowed in determining Virginia's starting point.³

¹ Chapter 17 of the 2019 Acts of Assembly, (H.B. 2529). A copy of the adopted law is accessible [here](#).

² Chapter 18 of the 2019 Acts of Assembly, (S.B. 1372). A copy of the adopted law is accessible [here](#).

³ H.B. 2529 and S.B. 1372, amending Va. Code Ann. §§ 58.1-301 and 58.1-400.

Conformity to IRC § 163(j)

The Act amended IRC § 163(j) to provide a deferral of certain business interest. The Bills conform to the provisions of IRC § 163(j) as amended by the Act, but provides a Virginia subtraction for individuals and corporations equal to 20% of business interest disallowed in determining federal taxable income in taxable years beginning on or after January 1, 2018. The Bills do not address business interest deferred under IRC § 163(j) and deducted in subsequent years.⁴

Individual Income Tax Changes

The Bills make the following changes to the Virginia individual income tax:

- The Virginia standard deduction is increased for taxable years beginning on and after January 1, 2019, but before January 1, 2026, to \$4,500 for single individuals and \$9,000 for married persons (\$4,500 in the case of a married individual filing a separate return).⁵
- IRC § 68 generally provided a limitation on individual itemized deduction when federal adjusted gross income exceeded certain amounts. The Act decouples from IRC § 68 for tax years beginning after December 31, 2017, and before January 1, 2026. The Bills decouple from this provision of the Act for years beginning on or after January 1, 2019; therefore, the limitation provided by IRC § 68 still applies in Virginia in years after 2018. The limitation provided by IRC § 68 does not apply in 2018.⁶
- The Act generally limited individual itemized deductions for state and local real property, personal property, sales and income taxes (the "SALT deduction") to an aggregate deduction of \$10,000 (\$5,000 in the case of a married individual filing a separate return) in tax years beginning after December 31, 2017. The Bills provide that for taxable years beginning on and after January 1, 2019, the actual amount of real and personal property taxes imposed by Virginia or any other taxing jurisdiction not otherwise deducted solely on account of the dollar limitation imposed under the Act may be deducted. The SALT deduction limitation imposed by the Act does apply for Virginia purposes for 2018.⁷
- The Bills provide that in addition to any individual income tax refund otherwise due, for 2018 taxable years, an individual filing a final return before July 1, 2019, or married persons filing a final joint return before July 1, 2019, shall be issued a one-time refund in an amount up to \$110 for an individual, or \$220 for married persons filing a joint return. Refunds shall be issued on or after October 1, 2019, but before October 15, 2019.⁸

Additional changes

The Bills establish a special non-reverting fund to be known as the "Taxpayer Relief Fund" (the Fund) wherein any state revenues generated by the individual income tax reform provisions contained in the Act shall be transferred to the Fund. The General Assembly must appropriate any revenues in the Fund to effectuate permanent or temporary state tax reform measures.⁹

ASC 740 treatment

Pursuant to ASC 740, "Income Taxes," companies are required to account for the effect of a change in income tax law in the period that includes the enactment date of that law change. The income tax law changes discussed in this Tax Alert were enacted on February 15, 2019. Accordingly, any impact of these tax law changes generally should be treated as a 2019 first quarter event for financial statement purposes for calendar year taxpayers.

Contacts:

If you have questions regarding the Bills or other Virginia tax matters, please contact any of the following Deloitte professionals:

David M. Vistica
Tax Managing Director
Deloitte Tax LLP, Washington DC
+1 202-340-5093
dvistica@deloitte.com

Scott Frishman
Tax Principal
Deloitte Tax LLP, McLean
+1 703-251-3471
sfrishman@deloitte.com

Jennifer Alban-Bond
Tax Senior Manager
Deloitte Tax LLP, McLean
+1 703-251-1419
jalbanbond@deloitte.com

⁴ H.B. 2529 and S.B. 1372, amending Va. Code Ann. §§ 58.1-301 and 58.1-322.03 and adding new Va. Code Ann. § 58.1-402.G.

⁵ H.B. 2529 and S.B. 1372, amending Va. Code Ann. § 58.1-322.03.

⁶ H.B. 2529 and S.B. 1372, amending Va. Code Ann. § 58.1-301.

⁷ H.B. 2529 and S.B. 1372, amending Va. Code Ann. § 58.1-322.03.

⁸ H.B. 2529 and S.B. 1372, § 4.

⁹ H.B. 2529 and S.B. 1372, § 5.

External Multistate Tax Alert

Joseph Carr
Tax Managing Director
Deloitte Tax LLP, McLean
+1 703-251-1532
josecarr@deloitte.com

Ann Kamasky
Tax Partner
Deloitte Tax LLP, McLean
+1 703-251-3620
akamasky@deloitte.com

For further information, visit our website at www.deloitte.com

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