

Enacted Oregon legislation creates new add-backs of federal tax reform deductions, repeals Oregon tax haven law, and creates new tax credits

Overview

Oregon Governor Kate Brown recently signed two significant pieces of Oregon legislation responding to federal tax reform. On April 10, 2018, Governor Brown signed Senate Bill 1529,¹ which includes the following notable amendments to Oregon tax law:

- Effective for taxable years beginning on or after January 1, 2017, Oregon taxpayers must add back amounts deducted under Internal Revenue Code (IRC) Section 965(c).
- Effective for taxable years beginning on or after January 1, 2017, Oregon's tax haven law is repealed.
- Effective for taxable years beginning on or after January 1, 2017 and before January 1, 2018, a new corporate income tax credit is created equal to the lesser of Oregon tax attributable to IRC Section 965 or the amount of Oregon tax attributable to and imposed on the taxpayer pursuant to Oregon's tax haven law for tax years beginning on or after January 1, 2014 and before January 1, 2017.

On April 13, 2018, Governor Brown signed Senate Bill 1528,² which includes the following amendments to Oregon tax law:

- Effective for tax years beginning on or after January 1, 2018 and before January 1, 2024, a new credit for both personal and corporate income taxes is created for certified contributions to the Oregon Opportunity Grant Fund.
- Effective for tax years beginning on or after January 1, 2018, Oregon taxpayers must add back to taxable income amounts deducted under IRC Section 199A.

Both of these bills become effective on June 10, 2018.³

This alert highlights key provisions of these two bills and provides some taxpayer considerations.

Oregon SB 1529 - Provisions affecting multinational businesses

Several of the most notable provisions of SB 1529 focus on Oregon's tax treatment of multinational businesses following the enactment of federal tax reform. For purposes of calculating taxable income, Oregon is a "rolling conformity" state, meaning that Oregon conforms to the IRC as amended and in

¹ A copy of Senate Bill 1529 is accessible [here](#).

² A copy of Senate Bill 1528 is accessible [here](#).

³ SB 1529, § 38; SB 1528, § 12. The 2018 Oregon legislative session adjourned sine die on March 11, 2018.

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effect for the taxable year of the taxpayer that relate to the calculation of taxable income.⁴ Accordingly, Oregon automatically conforms to the provisions of the 2017 Tax Act⁵ (the Act) that pertain to the calculation of taxable income.⁶

One such provision of the Act, IRC Section 965, creates a complex calculation of a “deemed repatriation” of post-1986 accrued balances of foreign earnings and profits (E&P) that have not yet been subject to federal income taxation. As part of this calculation, IRC Section 965(c) provides a deduction designed to effectively result in either a 15.5% or 8% federal tax rate on such foreign E&P, depending on whether the taxpayer holds the E&P as cash and cash equivalents, or in some other form. Effective for tax years beginning on or after January 1, 2017, SB 1529 amends Oregon’s dividends-received deduction statute (Or. Rev. Stat. 317.267) to require Oregon taxpayers to add back the deduction under IRC Section 965(c).⁷

SB 1529 also repeals Oregon’s tax haven statutes effective for tax years beginning on or after January 1, 2017.⁸ The combination of Oregon’s rolling conformity to the IRC – effectively taxing both accrued foreign E&P under IRC Section 965 and prospective foreign global intangible low-taxed income (GILTI) under IRC Section 951A – render Oregon’s tax haven statutes unnecessary.⁹

In order to prevent double-taxation of foreign E&P, SB 1529 further provides for a credit against corporate income taxes equal to the lesser of:

- Oregon tax attributable to income reported under IRC Section 965 for the 2017 tax year; or
- Total amount of tax attributable to Oregon’s tax haven law for the 2014 – 2016 tax years.¹⁰

This credit is non-refundable, but any unused credits may be carried forward for up to five years.¹¹

SB 1529 also requires the Oregon Department of Revenue to report to a committee of the Oregon Legislature by December 1, 2020 comparing the “relative efficacy” of Oregon’s tax haven law to the federal GILTI provisions of IRC Section 951A.¹²

SB 1528 - Add-back of 199A QBI deduction

The Act created a new deduction under IRC Section 199A for pass-through businesses equal to 20 percent of the entity’s qualified business income (QBI). The QBI deduction is generally applied at the partner/owner level. Oregon is somewhat unique in that the starting point for an individual’s calculation of taxable income is “federal taxable income.”¹³ Accordingly, Oregon personal income taxpayers would be able to claim the QBI deduction, unlike personal income taxpayers in a state that utilizes “adjusted gross income” as its starting point for calculating taxable income. Effective for tax years beginning on or after January 1, 2018, however, taxpayers subject to Oregon’s personal income tax must add back a QBI deduction claimed for federal purposes.¹⁴

⁴ Or. Rev. Stat. §§ 317.010(7)(b), 317.018. Several Oregon statutes that do not refer to the calculation of taxable income include targeted references to the IRC as amended and in effect on certain dates. Effective for tax years beginning on or after January 1, 2018, SB 1529 updates several of these specific date provisions from December 31, 2016 to December 31, 2017. SB 1529, §§ 1 – 27.

⁵ Pub. L. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

⁶ An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (P.L. 115-97).

⁷ SB 1529, § 28, amending Or. Rev. Stat. § 317.267(1).

⁸ SB 1529, §§ 35 – 36. Oregon’s tax haven statutes are currently found in Or. Rev. Stat. §§ 317.716 and 317.717.

⁹ The video recordings of the legislative hearings on SB 1529 is available here:

<https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/SB1529>.

¹⁰ SB 1529, § 33(1)-(2). This credit applies both to Oregon’s corporate excise tax (imposed on the net income of corporations doing business in Oregon) under Or. Rev. Stat. chapter 317 and Oregon’s corporate income tax (imposed on the net income of corporations not doing business in Oregon but having income from Oregon sources) under Or. Rev. Stat. chapter 318. For purposes of this alert, any reference to a corporate income tax refers to both Oregon’s corporate income and excise taxes.

¹¹ SB 1529, § 33(3)-(4).

¹² SB 1529, § 37.

¹³ See, e.g., Or. Rev. Stat. § 316.048.

¹⁴ SB 1528, §§ 9 – 11.

SB 1528 - Tax Credit for Contributions to New Opportunity Grant Fund

Effective for tax years beginning on or after January 1, 2018 and before January 1, 2024, SB 1528 creates a credit against Oregon personal and corporate income taxes for contributions to a new Opportunity Grant Fund (the Fund).¹⁵ The Oregon Department of Revenue will conduct an auction of tax credits with a reserve amount of at least 95 percent of the total amount of the tax credit.¹⁶ Amounts received by the Department will be deposited into the Fund.¹⁷ Taxpayers who make contributions to the Fund through this auction will receive written certification of the amount of the tax credit.¹⁸ The total amount of certified tax credits will be capped at \$14 million.¹⁹

The tax credit is not refundable and unused credits may be carried forward for up to three years.²⁰ If the amount of the certified tax credit is allowed as a deduction for federal income tax purposes, then the taxpayer must add back the amount of the contribution when calculating Oregon taxable income.²¹

Considerations

SB 1529 and SB 1528 result in significant changes to Oregon's corporate and personal income taxes in response to federal tax reform. Oregon's repeal of its tax haven law, based on its belief that the federal provisions under IRC Sections 951A and 965 effectively achieve the same policy goals, will be the subject of further study by the Department and the legislature. Oregon's new credit for contributions to the Fund represents the state's effort to address the federal cap on state and local taxes through a conversion of state and local tax payments into charitable contributions.²² Taxpayers impacted by the enactment of SB 1529 or SB 1528 should consult with their Oregon tax advisors for further assistance.

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¹⁵ SB 1528, §§ 1 – 6.

¹⁶ SB 1528, § 2(2)(a). Using this reserve amount, the taxpayer would need to bid at least 95 percent of the amount of the credit (subject to the actual reserve amount decided upon by the Department).

¹⁷ *Id.* The Fund will appropriate its funds to the Oregon Higher Education Coordinating Commission, which is a state entity designed to assist Oregon citizens with higher education. SB 1528, § 4(3).

¹⁸ SB 1528, § 2(4)(a).

¹⁹ *Id.*

²⁰ SB 1528, § 2(5).

²¹ SB 1528, § 2(8).

²² Deloitte Tax expresses no opinion regarding the efficacy of the state's effort.