

STATE OF NEW YORK

5962

2019-2020 Regular Sessions

IN ASSEMBLY

February 20, 2019

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to the definitions of the terms "CFC income" and "entire net income"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (b) of subdivision 6-a of section 208 of the tax
2 law, as amended by section 1 of part KK of chapter 59 of the laws of
3 2018, is amended to read as follows:

4 (b) "Exempt CFC income" means (i) except to the extent described in
5 subparagraph (ii) of this paragraph, the income required to be included
6 in the taxpayer's federal gross income pursuant to subsection (a) of
7 section 951 of the internal revenue code, received from a corporation
8 that is conducting a unitary business with the taxpayer but is not
9 included in a combined report with the taxpayer, and (ii) such income
10 required to be included in the taxpayer's federal gross income pursuant
11 to subsection (a) of such section 951 of the internal revenue code by
12 reason of subsection (a) of section 965 of the internal revenue code, as
13 adjusted by subsection (b) of section 965 of the internal revenue code,
14 and without regard to subsection (c) of such section, received from a
15 corporation that is not included in a combined report with the taxpayer,
16 less, and (iii) such income required to be included in the taxpayer's
17 federal gross income pursuant to subsection (a) of section 951A of the
18 internal revenue code, without regard to the deduction under section 250
19 of the internal revenue code, received from a corporation that is not
20 included in a combined report with the taxpayer, less, (iv) in the
21 discretion of the commissioner, any interest deductions directly or
22 indirectly attributable to that income. In lieu of subtracting from its
23 exempt CFC income the amount of those interest deductions, the taxpayer
24 may make a revocable election to reduce its total exempt CFC income by

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 forty percent. If the taxpayer makes this election, the taxpayer must
2 also make the elections provided for in paragraph (b) of subdivision six
3 of this section and paragraph (c) of this subdivision. If the taxpayer
4 subsequently revokes this election, the taxpayer must revoke the
5 elections provided for in paragraph (b) of subdivision six of this
6 section and paragraph (c) of this subdivision. A taxpayer which does not
7 make this election because it has no exempt CFC income will not be
8 precluded from making those other elections. The income described in
9 ~~[subparagraph]~~ subparagraphs (ii) and (iii) of this paragraph shall not
10 constitute investment income.

11 § 2. Paragraph (b) of subdivision 9 of section 208 of the tax law is
12 amended by adding a new subparagraph 25 to read as follows:

13 (25) The amount of any federal deduction allowed pursuant to section
14 250(a)(1)(B)(i) of the internal revenue code.

15 § 3. Paragraph (b) of subdivision 5-a of section 11-652 of the admin-
16 istrative code of the city of New York, as amended by section 1-a of
17 part KK of chapter 59 of the laws of 2018, is amended to read as
18 follows:

19 (b) "Exempt CFC income" means (i) except to the extent described in
20 subparagraph (ii) of this paragraph, the income required to be included
21 in the taxpayer's federal gross income pursuant to subsection (a) of
22 section 951 of the internal revenue code, received from a corporation
23 that is conducting a unitary business with the taxpayer but is not
24 included in a combined report with the taxpayer, and (ii) such income
25 required to be included in the taxpayer's federal gross income pursuant
26 to subsection (a) of such section 951 of the internal revenue code by
27 reason of subsection (a) of section 965 of the internal revenue code, as
28 adjusted by subsection (b) of section 965 of the internal revenue code,
29 and without regard to subsection (c) of such section, received from a
30 corporation that is not included in a combined report with the taxpayer,
31 less, and (iii) such income required to be included in the taxpayer's
32 federal gross income pursuant to subsection (a) of section 951A of the
33 internal revenue code, without regard to the deduction under section 250
34 of the internal revenue code, received from a corporation that is not
35 included in a combined report with the taxpayer, less, (iv) in the
36 discretion of the commissioner of finance, any interest deductions
37 directly or indirectly attributable to that income. In lieu of
38 subtracting from its exempt CFC income the amount of those interest
39 deductions, the taxpayer may make a revocable election to reduce its
40 total exempt CFC income by forty percent. If the taxpayer makes this
41 election, the taxpayer must also make the elections provided for in
42 paragraph (b) of subdivision five of this section and paragraph (c) of
43 this subdivision. If the taxpayer subsequently revokes this election,
44 the taxpayer must revoke the elections provided for in paragraph (b) of
45 subdivision five of this section and paragraph (c) of this subdivision.
46 A taxpayer which does not make this election because it has no exempt
47 CFC income will not be precluded from making those other elections. The
48 income described in ~~[subparagraph]~~ subparagraphs (ii) and (iii) of this
49 paragraph shall not constitute investment income.

50 § 4. Paragraph (b) of subdivision 8 of section 11-652 of the adminis-
51 trative code of the city of New York is amended by adding a new subpara-
52 graph 22 to read as follows:

53 (22) The amount of any federal deduction allowed pursuant to section
54 250(a)(1)(B)(i) of the internal revenue code.

55 § 5. Paragraph 1 of subdivision (b) of section 1503 of the tax law is
56 amended by adding a new subparagraph (T) to read as follows:

1 (T) To the extent not excluded from income pursuant to subparagraph
2 (A) of this paragraph, the income required to be included in the taxpay-
3 er's federal gross income pursuant to subsection (a) of section 951A of
4 the internal revenue code, without regard to the deduction under section
5 250 of the internal revenue code, that is generated by a corporation
6 that is not included in a combined report with the taxpayer.

7 § 6. Paragraph 2 of subdivision (b) of section 1503 of the tax law is
8 amended by adding a new subparagraph (Y) to read as follows:

9 (Y) The amount of the federal deduction allowed pursuant to subpara-
10 graph (B)(i) of paragraph one of subsection (a) of section 250 of the
11 internal revenue code.

12 § 7. Subparagraph (H) of paragraph 2 of subdivision (b) of section
13 1503 of the tax law, as amended by section 4-e of part KK of chapter 59
14 of the laws of 2018, is amended to read as follows:

15 (H) in the discretion of the commissioner, any amount of interest
16 directly or indirectly and any other amount directly attributable as a
17 carrying charge or otherwise to subsidiary capital or to income, gains
18 or losses from subsidiary capital, or to the income described in
19 ~~[subparagraph]~~ subparagraphs (S) and (T) of paragraph one of this subdi-
20 vision;

21 § 8. This act shall take effect immediately and shall apply to taxable
22 years beginning on or after January 1, 2018.