

STATE OF NEW YORK

8991

IN SENATE

June 11, 2018

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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
25 forty percent. If the taxpayer makes this election, the taxpayer must
26 also make the elections provided for in paragraph (b) of subdivision six
27 of this section and paragraph (c) of this subdivision. If the taxpayer

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

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

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

10 (25) The amount of any federal deduction allowed pursuant to section
11 250(a)(1)(B)(i) of the internal revenue code.

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

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

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

50 (22) The amount of any federal deduction allowed pursuant to section
51 250(a)(1)(B)(i) of the internal revenue code.

52 § 5. This act shall take effect immediately and shall apply to taxable
53 years beginning on or after January 1, 2018.