STATE OF NEW YORK

5962--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to exempting from tax a portion of global intangible low-taxed income

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

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

(b) "Exempt CFC income" means (i) except to the extent described in subparagraph (ii) of this paragraph, the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951 of the internal revenue code, received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, [~~and~~] (ii) such income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of such section 951 of the internal revenue code by reason of subsection (a) of section 965 of the internal revenue code, as adjusted by subsection (b) of section 965 of the internal revenue code, and without regard to subsection (c) of such section, received from a corporation that is not included in a combined report with the taxpayer, **and (iii) ninety-five percent of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code, without regard to the deduction under section 250 of the internal revenue code, received from a corporation that is not included in a combined report with the taxpayer,** less, [~~(iii)~~] **(iv)** in the discretion of the commissioner, any interest deductions directly or indirectly attributable to that income. In lieu of subtracting from its exempt CFC income the amount of those interest deductions, the taxpayer may make a revocable election to

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

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reduce its total exempt CFC income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (c) of this subdivision. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraph (b) of subdivision six of this section and paragraph (c) of this subdivision. A taxpayer which does not make this election because it has no exempt CFC income will not be precluded from making those other elections. The income described in [~~subparagraph~~] **subparagraphs** (ii) **and (iii)** of this paragraph shall not constitute investment income. **The income described in subparagraph (iii) of this paragraph shall not constitute exempt unitary corporation dividends.**

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

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

§ 3. Subdivision 5-a of section 210-A of the tax law, as added by section 1 of part C of chapter 59 of the laws of 2019, is amended to read as follows:

5-a. [~~Net global~~] **Global** intangible low-taxed income. **(a)** Notwithstanding any other provision of this section, [~~net~~] global intangible low-taxed income shall be included in the apportionment fraction as provided in this subdivision. [~~Receipts constituting net~~]

(b) For New York C corporations, global intangible low-taxed income shall not be included in the numerator of the apportionment fraction. [~~Receipts constituting net~~] **Five percent** of global intangible low-taxed income shall be included in the denominator of the apportionment fraction.

(c) For New York S corporations, global intangible low-taxed income shall not be included in the numerator of the apportionment fraction. Global intangible low-taxed income shall be included in the denominator of the apportionment fraction.

(d) For purposes of this subdivision, the term "[~~net~~] global intangible low-taxed income" means the amount required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code [~~less the amount of the deduction allowed under clause (i) of section 250(a)(1)(B) of such code~~].

§ 4. Paragraph 1 of subdivision (b) of section 1503 of the tax law is amended by adding two new subparagraphs (U) and (V) to read as follows:

(U) To the extent not excluded from income pursuant to subparagraph (A) of this paragraph, ninety-five percent of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code, without regard to the deduction under section 250 of the internal revenue code, that is generated by a corporation that is not included in a combined report with the taxpayer.

(V) To the extent not excluded from income pursuant to subparagraph (A) or (B) of this paragraph, any amount treated as a dividend received by the taxpayer under section 78 of the internal revenue code that is attributable to the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of such code.

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

(Y) The amount of the federal deduction allowed pursuant to section 250(a)(1)(B) of the internal revenue code.

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

(H) in the discretion of the commissioner, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital, or to the income described in [~~subparagraph~~] **subparagraphs (S), (U) and (V)** of paragraph one of this subdivision;

§ 7. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2019.