

# 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:

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 and (iii) ninety-five percent of the income required to be included in  
17 the taxpayer's federal gross income pursuant to subsection (a) of  
18 section 951A of the internal revenue code, without regard to the  
19 deduction under section 250 of the internal revenue code, received from  
20 a corporation that is not included in a combined report with the taxpay-  
21 er, less, [~~(iii)~~] (iv) in the discretion of the commissioner, any inter-  
22 est deductions directly or indirectly attributable to that income. In  
23 lieu of subtracting from its exempt CFC income the amount of those  
24 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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1 reduce its total exempt CFC income by forty percent. If the taxpayer  
2 makes this election, the taxpayer must also make the elections provided  
3 for in paragraph (b) of subdivision six of this section and paragraph  
4 (c) of this subdivision. If the taxpayer subsequently revokes this  
5 election, the taxpayer must revoke the elections provided for in para-  
6 graph (b) of subdivision six of this section and paragraph (c) of this  
7 subdivision. A taxpayer which does not make this election because it has  
8 no exempt CFC income will not be precluded from making those other  
9 elections. The income described in [~~subparagraph~~] subparagraphs (ii) and  
10 (iii) of this paragraph shall not constitute investment income. The  
11 income described in subparagraph (iii) of this paragraph shall not  
12 constitute exempt unitary corporation dividends.

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

15 (25) The amount of any federal deduction allowed pursuant to section  
16 250(a)(1)(B)(i) of the internal revenue code.

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

20 5-a. [~~Net-global~~] Global intangible low-taxed income. (a) Notwith-  
21 standing any other provision of this section, [~~net~~] global intangible  
22 low-taxed income shall be included in the apportionment fraction as  
23 provided in this subdivision. [~~Receipts-constituting-net~~]

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

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

33 (d) For purposes of this subdivision, the term "[net] global intangi-  
34 ble low-taxed income" means the amount required to be included in the  
35 taxpayer's federal gross income pursuant to subsection (a) of section  
36 951A of the internal revenue code [~~less the amount of the deduction~~  
37 allowed under clause (i) of section 250(a)(1)(B) of such code].

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

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

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

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

55 (Y) The amount of the federal deduction allowed pursuant to section  
56 250(a)(1)(B) of the internal revenue code.

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

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

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