

Income/Franchise:

Nebraska: Taxpayer Seeks State High Court Ruling on Whether Section 965 Income Under One-Time Repatriation Tax is Deductible

Case No. A-23-564, Neb. Ct. App. (petition to bypass 10/11/23). After a Nebraska lower court in June denied a taxpayer's claimed Nebraska corporate income tax deduction for income of its foreign subsidiaries that was deemed repatriated for federal income tax purposes and included in the company's 2017 federal taxable income under Internal Revenue Code section 965 pursuant to law changes under the federal Tax Cuts and Jobs Act of 2017 ("Section 965 income"), the taxpayer is now petitioning the Nebraska Court of Appeals for a bypass, requesting instead that the Nebraska Supreme Court resolve its appeal "in the first instance." According to the taxpayer's filed petition, its question on appeal is whether this Section 965 income constitutes "dividends . . . deemed to be received" within the meaning of Neb. Rev. Stat. § 77-2716(5) – asserting that if it does, then it must be subtracted from federal taxable income to derive the Nebraska taxable income base. Note that pursuant to guidance issued in 2019, the Nebraska Department of Revenue has indicated that such Section 965 income is *not* deductible for Nebraska corporate income tax purposes [see GIL 24-19-1, Neb. Dept. of Rev. (9/13/19) for details on this administrative guidance]. Please contact us with any questions.

URL: https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/legal/gil/GIL24-19-01_Section_965.pdf

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