

Income/Franchise:

Nebraska Supreme Court Affirms that Section 965 Income Under One-Time Repatriation Tax is Not Deductible

Case S-23-564, Neb. (8/30/24). The Nebraska Supreme Court (Court) affirmed a lower state court's 2023 decision denying a taxpayer's claimed Nebraska corporate income tax deduction for income of its foreign subsidiaries that was deemed repatriated and included in the company's 2017 federal taxable income under Internal Revenue Code (IRC) section 965 pursuant to law changes under the federal Tax Cuts and Jobs Act of 2017, basing its opinion on the US Supreme Court's recent characterization of such income [see Docket No. 22-800, US (6/20/24) and *State Tax Matters*, Issue 2024-26, for more details on this recent US Supreme Court ruling] and language of the applicable Nebraska statute. Specifically, the Court concluded that the language of IRC section 965 does not deem the income included to be dividends, and IRC section 965 employs pass-through treatment to attribute earnings to shareholders without deeming a distribution to have been made to shareholders. Accordingly, the Court held that income included in federal taxable income pursuant to IRC section 965 does *not* qualify for deduction as "dividends . . . deemed to be received" under Neb. Rev. Stat. § 77-2716(5). Please contact us with any questions.

URL: <https://supremecourt.nebraska.gov/courts/supreme-court/opinions>

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240628_1.html

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