

Income/Franchise:

New Jersey Tax Court Says Couple's IRC §965 Deemed Repatriation Dividends are Not Subject to Gross Income Tax

Case No. 007430-2022, N.J. Tax Ct. (12/31/24). In a case regarding whether the New Jersey Division of Taxation properly required a couple to include the undistributed earnings of certain controlled foreign corporations (CFCs) as deemed repatriation dividends taxable under New Jersey's gross (individual) income tax (GIT) for tax year 2017 because the couple reported the same on their 2017 federal income tax return pursuant to Internal Revenue Code (IRC) section 965, a published New Jersey Tax Court (Court) opinion held that such undistributed income is *not* includible under the GIT Act as "dividends" under the plain meaning of applicable New Jersey statutes (specifically, under N.J.S.A. 54A:5-1(f)). In doing so, the Court reasoned that the couple in this case did not receive, whether in cash or in kind, any amount from the CFCs (*i.e.*, they received no economic benefit, actually or constructively, due to their shareholder status), and concluded that the term "dividends" under N.J.S.A. 54A:5-1(f) cannot be expanded to include the one-time "deemed repatriation dividend" under IRC section 965. According to the Court, "there is no incorporation of any federal tax statutes that undistributed cash/property is included in the definition of dividends or are deemed to be dividends under N.J.S.A. 54A:5-1(f)." The Court also noted that the taxability of deemed distributed Subpart F income to individual US shareholders "was prevalent long before 2017," which "evidences the New Jersey Legislature's choice not to follow the federal income tax scheme of including, any undistributed Subpart F income as gross income, when enacting N.J.S.A. 54A:5-1(f)." Please contact us with any questions.

URL: <https://www.njcourts.gov/system/files/court-opinions/2024/07430-22opn.pdf>

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