

Income/Franchise:

Nebraska DOR Issues Guidance on State Dividend Treatment of Federal Subpart F Income

Revenue Ruling 24-21-1, Neb. Dept. of Rev. (2/17/21). The Nebraska Department of Revenue (Department) issued a revenue ruling addressing to what extent “Subpart F income” under the Internal Revenue Code (IRC) may qualify as a dividend or deemed dividend for purposes of the Nebraska dividend and deemed dividend deduction from federal taxable income (for corporations) or federal adjusted gross income (for individuals). In doing so, the Department generally concludes that while Subpart F income is not categorically a dividend or deemed dividend, “those portions of Subpart F income that are dividends or deemed dividends can be deducted from federal adjusted gross income or federal taxable income pursuant to the Nebraska dividend and deemed dividend deduction.” The guidance highlights that some Subpart F inclusions are specifically deemed to be dividends in the IRC, including:

URL: https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/legal/rulings/rr242101_Subpart_F_Income.pdf

- IRC section 964(e)(4) gains on the sale or exchange by a controlled foreign corporation of stock in another foreign corporation;
- IRC section 245A(e)(2) hybrid dividends; and
- IRC section 954(c)(1)(A) foreign personal holding company dividends.

According to the guidance, “because Nebraska law follows the IRC’s dividend designations, the gross income reported under these subsections are dividends or deemed dividends for purposes of the Nebraska dividend and deemed dividend deduction provided in Neb. Rev. Stat. § 77-2716(5).” Any deduction for Subpart F income claimed as a dividend or deemed dividend other than these specific listed instances “will be disallowed” for Nebraska purposes.

For underlying apportionment purposes, the guidance states that the denominator of the sales factor generally “should include the Subpart F income included in gross income of the corporate taxpayer and exclude the part of Subpart F income that is deducted as dividends received or deemed received pursuant to the Neb. Rev. Stat. § 77-2716(5).” For Nebraska sourcing purposes, the guidance explains that taxpayers must treat such income as “sales other than sales of tangible personal property” not specifically addressed under state law and thus must be sourced so as to fairly represent the extent of the taxpayer’s business activity in Nebraska. In the event that there is not a way to identify how much activity, that results in Subpart F income, is associated with Nebraska to fairly represent the extent of the taxpayer’s in-state business activity, “then taxpayers must include Subpart F income in their sales factor denominator, and exclude this income from their sales factor numerator.” Please contact us with any questions.

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