Income/Franchise:

Utah: New Law Revises Provisions Involving NOLs, GILTI, FDII and Repatriated Dividends

S.B. 25, signed by gov. 3/22/21. Applicable with "retrospective operation for a taxable year beginning on or after January 1, 2021," new law amends Utah corporate franchise and income tax provisions related to Utah net losses to clarify calculation of the 80% limitation on carrying forward a Utah net loss. For a taxable year beginning on or after January 1, 2021, the legislation states that the amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction of any Utah net loss. Among other revisions involving Utah net losses, the legislation provides that if a taxpayer carries forward a Utah net loss from a taxable year beginning before January 1, 2018, and a Utah net loss from a taxable year beginning on or after January 1, 2018, the Utah State Tax Commission "shall instruct the taxpayer to calculate" such 80% limitation by:
URL: https://le.utah.gov/~2021/bills/static/SB0025.html

1. Following federal guidance for calculating the 80% of taxable income limitation for federal income tax purposes; or
2. If the Utah State Tax Commission determines that adequate federal corporate guidance on how to calculate the 80% limitation is unavailable, by:
    a. Calculating 80% of Utah taxable income before deducting any Utah net losses from Utah taxable income; and
    b. Applying the limitation that the Utah net loss that a taxpayer carries forward may not exceed 80% of Utah taxable income to Utah net losses incurred on or after January 1, 2018, without regard to Utah net losses from a previous taxable year that the taxpayer carries forward.

If the only Utah net loss that a taxpayer carries forward is from a taxable year that began before January 1, 2018, the new law provides that the Utah State Tax Commission:

1. Must instruct the taxpayer to calculate such 80% limitation by following federal guidance for calculating the 80% taxable income limitation for federal income tax purposes; or
2. If the Utah State Tax Commission determines that adequate federal corporate guidance on how to calculate the 80% limitation is unavailable, may not apply the 80% limitation to the Utah net loss.

H.B. 39, signed by gov. 3/22/21. Another recently signed bill with retrospective operation for the last taxable year of a taxpayer beginning on or before December 31, 2017, as well as a taxable year beginning on or after January 1, 2018, i) amends the statutory definition of "unadjusted income" to mean "federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions," and ii) removes the reference to "for dividends received." The legislation provides that Utah's dividends received deduction includes amounts comprised in federal taxable income under Internal Revenue Code (IRC) sections 965(a) and 951A.

The new law also specifically defines “special deductions” by providing that special deductions includes deductions under IRC sections 250 and 965(c). Please contact us with any questions.

URL: https://le.utah.gov/~2021/bills/static/HB0039.html

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