

Income/Franchise:

Virginia: Individual S Corp Shareholder Can't Subtract Proportionate Share of Deferred Foreign Income

Public Document No. 22-97, Va. Dept. of Tax. (5/26/22). The Virginia Department of Taxation (Department) held that a nonresident individual who had an ownership interest in an S corporation that had Virginia taxable income during the 2017 taxable year may *not* claim a subtraction for deferred foreign income earned by the S corporation on his 2017 Virginia nonresident individual income tax return, because the subpart F income was included in the individual's federal adjusted gross income and state law does not permit a subtraction adjustment for such income. The individual unsuccessfully claimed that pursuant to Virginia Code § 58.1-402.C.7, corporations may subtract "any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income)" and thus the S corporation's subpart F income that flowed to him in proportion to his ownership interest in it may be subtracted on his 2017 Virginia individual income tax return. The Department explained that state law limits the type of subtraction modifications passed through from pass-through entities like the S corporation at issue to those permitted under Virginia Code § 58.1-322.02, which does not provide a subtraction adjustment for subpart F income. Please contact us with any questions.

URL: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/22-97>

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