Deloitte.

State Tax Matters
The power of knowing.
September 2, 2022

Income/Franchise:
Tennessee: Tax Manual Reflects Treatment of TCJA Changes Involving GILTI, IRC §174, and Opportunity Zones

Franchise and Excise Tax Manual, Tenn. Dept. of Rev. (updated 8/22); *Tax Manual Updates*, Tenn. Dept. of Rev. (8/22). The Tennessee Department of Revenue recently updated its franchise and excise tax manual to incorporate some new state tax law changes and answers to taxpayer questions in an effort to help provide "improved clarity or expanded guidance," some of which address the state tax implications of certain changes to the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97 or "TCJA"). Regarding the TCJA, the updated manual explains:
URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/august-2022/Franchise-Excise-Tax.pdf
URL: https://www.tn.gov/content/dam/tn/revenue/documents/tax_manuals/august-2022/Updates-August-2022.pdf

- For tax years beginning on or after January 1, 2022, new state law [see S.B. 2397 (2022) and *State Tax Matters*, Issue 2022-13 for more details on this new law] provides that Internal Revenue Code (IRC) section 174 involving a federal income tax deduction for certain research and experimental expenditures must be applied for Tennessee franchise and excise tax purposes as it was in effect immediately before enactment of the TCJA and that, as a result, "taxpayers may continue to immediately deduct research and development expenditures as paid or incurred during the tax year;" and
  URL: https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB2397
  URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220401_9.html
- While Tennessee taxes 5% of a taxpayer's IRC section 951A global intangible low-taxed income (GILTI) inclusion for Tennessee excise tax purposes, "no amount of a taxpayer's GILTI inclusion is included in the taxpayer's sales factor numerator or denominator for apportionment purposes" pursuant to Tennessee's market-based sourcing rules.

The manual continues to note that Tennessee has *not* decoupled from the TCJA provisions governing the federal income tax treatment of eligible gains that are invested in "Qualified Opportunity Zone" property via a "Qualified Opportunity Fund" and, thus, "to the extent a taxpayer defers (and subsequently recognizes) eligible gains for federal income tax purposes, pursuant to the TCJA Qualified Opportunity Zone and Qualified Opportunity Fund provisions, Tennessee conforms to the federal income tax treatment of such gains for Tennessee excise tax purposes." The manual also continues to explain how "special consideration" must be given to partnerships in applying the federal income tax treatment of such eligible capital gains for Tennessee excise tax purposes.

Other recent updates to the manual provide some guidance regarding the apportionment ratio calculation when a taxpayer's property, payroll, and sales factors are all zero, as well as clarify how to determine whether a taxpayer qualifies as a "manufacturer" eligible to make Tennessee's optional single sales factor apportionment election. Please contact us with any questions.

— Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

Carol Henderson (Atlanta)
Senior Manager
Deloitte Tax LLP
carhenderson@deloitte.com

Amber Rutherford (Nashville)
Senior Manager
Deloitte Tax LLP
amberrutherford@deloitte.com

Linda Bonelli (Chicago)
Partner
Deloitte Tax LLP
lbonelli@deloitte.com