NORTH CAROLINA

Lawmakers Introduce Measure Responding to TCJA Decoupling

by Amy Hamilton

A bill would decouple the state from federal Tax Cuts and Jobs Act (P.L. 115-97) provisions on global intangible low-taxed income and foreign-derived intangible income, but practitioners say language purporting to decouple from repatriation provisions still needs work.

The General Assembly's Revenue Laws Study Committee developed S. 715, introduced May 16 for the legislature's short session by Sens. Jerry Tillman and Tommy Tucker, the Republican co-chairs of the Senate Finance Committee.

As approved by the Finance Committee on May 17, the measure would update North Carolina's reference to the IRC to February 9, 2018, meaning that to the extent North Carolina follows federal tax provisions in calculating state tax liability, changes made by the TCJA and by the Bipartisan Budget Act of 2018 would apply.

> ***Nelson said the bill's intent was to 'decouple from both the income inclusion and the deduction' under IRC section 965(c).***

As a result, North Carolina would conform to the IRC section 163(j) interest expense limitation, among several other provisions. The State Taxes After Reform Partnership, a coalition formed to advocate for business interests as states address the TCJA, is recommending that North Carolina decouple from the limitation. In a talking points memo, the coalition wrote that North Carolina "already has provisions in place to address improper interest deductions, such as the related-party add back provisions and the potential application of transfer pricing principles."

S. 715 would decouple from the IRC section 250 inclusion and deductions associated with foreign-derived intangible income and GILTI.

The coalition was unclear about the state's approach to repatriated earnings. William Nelson of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan LLP in Raleigh has written client alerts about the measure and said he has discussed its repatriation provisions with legislative staff.

"The intent is to decouple from both the income inclusion and the deduction provided by [IRC section] 965(c)," Nelson said in an email to Tax Analysts.

Nelson said North Carolina exempts income inclusions under subpart F from the calculation of state net income, so no statutory change is needed to decouple from the deemed repatriation of earnings. However, the TCJA includes a section 965(c) deduction to lower the effective tax rate on the repatriated earnings, and Nelson said S. 715 does not yet appear to decouple from this deduction. He added that lawmakers are expected to amend the bill to require addback of the deduction under section 965(c) in computing state net income.

Separately, for franchise tax purposes, the measure would amend the definition of a corporation to include partnerships that elect to be taxed as a corporation; state law already allows limited liability companies to elect to be taxed as corporations. The measure also would provide guidance to the Department of Revenue regarding the term "income-producing activity" for apportionment purposes. ■