



**Section 965, Internal Revenue Code (IRC)
Transition Tax – Repatriation
Impact on Florida Corporate Income/Franchise Tax Return (Form F-1120)**

Florida uses federal taxable income as the starting point in determining the total amount of Florida corporate income tax due. Florida maintains its relationship with the Internal Revenue Code by annually adopting the federal Code as it exists on January 1. By doing this, Florida adopts any changes related to determining federal taxable income that were made during the previous year at the time the changes became law. To calculate the Florida corporate income tax due, federal taxable income is adjusted by applying certain Florida additions and subtractions. These adjustments are intended to modify taxable income for Florida tax purposes and to reflect federal provisions or treatments that Florida has elected not to adopt.

The Internal Revenue Code was amended on December 22, 2017 (Public Law 115-97, commonly known as the Tax Cuts and Jobs Act), to impose a unique one-time transition tax at a reduced rate on foreign earnings as if they had been repatriated to the United States. Section 1, Chapter 2018-119, Laws of Florida, amends the Florida Income Tax Code to adopt the Internal Revenue Code retroactively to January 1, 2018. This means Florida's rolling conformity follows the computation of federal taxable income, including any section 965, IRC, income required to be included in the last taxable year beginning before January 1, 2018.

On April 6, 2018, the Internal Revenue Service issued guidance in Publication 5292 (*How to Calculate Section 965 Amounts and Elections Available to Taxpayers*) and posted questions and answers about reporting related to section 965, IRC, on its website (<https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>). Publication 5292 discusses S-corporations, partnerships, and real estate investment trusts separately from other entities. The Publication instructs taxpayers to compute repatriation income outside the standard computations of federal taxable income and requires separate payment of any tax due.

Generally, repatriation income under section 965, IRC, does not flow into federal taxable income. There is no Florida addition in section 220.13(1)(a), Florida Statutes, for repatriated income excluded from the federal income tax computation. Therefore, no Florida corporate income tax is due on repatriation income that is excluded from the standard computation of federal taxable income. In addition, such repatriation income is excluded from the Florida apportionment fraction computation.

However, to the extent repatriation income flows into federal taxable income, such as through a real estate investment trust (federal Form 1120-REIT), it would be included in the starting point of the Florida corporate income tax computation on Line 1 of the front page of the Florida return. If this occurs, pursuant to section 220.13(1)(b)2.b., Florida Statutes, the repatriated amount is subtracted as subpart F income, net of direct and indirect expenses incurred in the taxable year.

References: Chapter 2018-119, Laws of Florida; Sections 220.03 and 220.13, Florida Statutes

For More Information

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit the Department's website at floridarevenue.com or call Taxpayer Services at 850-488-6800, Monday through Friday (excluding holidays).

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services MS 3-2000, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

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