



# TaxNewsFlash

United States



No. 2021-239  
June 3, 2021

## Illinois: Budget agreement includes corporate tax revenue raisers

The Illinois House and Senate on June 1, 2021, passed budget agreement legislation (Senate Bill 2017, as amended by House Amendment 2) that includes certain measures that would increase taxes for corporate taxpayers.

### **KPMG observation**

Tax professionals believe that the governor could sign the legislation given that in his fiscal year (FY) 2022 budget, the governor proposed addressing the state's deficit by cutting spending and closing certain corporate "loopholes." The budget deal includes closing four of these perceived loopholes.

### **Cap on net operating losses (NOLs)**

For corporate taxpayers, Illinois requires an addback of the federal NOL, and then a state specific NOL is computed and taken as a subtraction modification.

As a result, although Illinois is a "rolling conformity state," for corporate taxpayers, Illinois does not conform to the "Tax Cuts and Jobs Act" (TCJA) 80% limitation on the use of NOLs or the suspension of the 80% limitation under the CARES Act. Also, Illinois does not allow corporate taxpayers to carry back NOLs and provides for only a 12-year carryforward period.

Under the budget agreement legislation—for tax years ending on or after December 31, 2021, and prior to December 31, 2024—for corporations (other than S corporations) and combined filing groups, no NOL carryover deduction could exceed \$100,000 for any tax year. In determining the 12-year NOL carryforward period, no tax year for which NOL utilization is limited to \$100,000 would be counted. However, if the NOL used is under the \$100,000 cap, then additional carryforward years would not be added.

### **Change to taxation of certain foreign dividends**

Under 35 ILCS 5/203(b)(2)(O), a subtraction modification is allowed for foreign dividends to the extent that a deduction would be allowed under IRC section 243(a)(1) if that federal section applies to foreign

dividends. The Department of Revenue treats subpart F income and GILTI as foreign deemed dividends that are eligible for the Illinois foreign dividend subtraction modification. Illinois also has permitted amounts deducted as part of federal taxable income, such as amounts deducted under IRC section 245A(a), to remain as deductions in the Illinois tax base computation given the connection of the Illinois base to a federal taxable income starting point.

Under the budget agreement legislation, for tax years ending after June 30, 2021, corporations would be required to add back an amount equal to the deduction allowed under IRC section 250(a)(1)(B)(i). This is the deduction that effectively reduces the tax rate applied to GILTI. An addback also would be required for an amount equal to the deductions allowed under IRC sections 243(e) and 245A(a).

IRC section 243(e) allows certain foreign dividends to be treated as domestic dividends for purposes of the dividends-received deduction. IRC section 245A(a) allows a dividends-received deduction for the foreign source portion of a dividend received from a "specified 10% owned foreign corporation."

Further, in computing the foreign dividends-received deduction for tax years ending on or after June 30, 2021, the term "dividend" would not include any amount treated as a dividend under IRC section 1248 (which treats gains on sales or exchanges of stock in certain foreign corporations as a dividend), and the dividends-received deduction would not apply to dividends for which a deduction is permitted under IRC section 245(a) (which allows a deduction for the U.S. source portion of dividends received from a qualified 10% owned foreign corporation).

### **Bonus depreciation**

Illinois base income starts with "taxable income properly reportable for federal income tax purposes for the taxable year." Taxpayers must add back an amount equal to the bonus depreciation deduction taken on the taxpayer's federal income tax return for the tax year under IRC section 168(k), regardless of the percentage of "bonus" that is applied. In tax years when 30% or 50% bonus depreciation was allowed at the federal level, an additional subtraction modification for depreciation was then allowed as a reduction on the Illinois return. If an asset was disposed of or reached its last year of federal depreciation, then all prior modifications made for that asset were reversed. Because the first depreciable year of an asset is also its final depreciable year under 100% bonus depreciation, Illinois effectively did not require a modification for assets on which 100% federal bonus depreciation was taken. In other words, Illinois conformed to 100% bonus depreciation.

The budget agreement legislation would retain an addback modification for the bonus depreciation deduction under IRC section 168(k) that was taken on the taxpayer's federal income tax return for the tax year. However, for tax years ending on or after December 31, 2021, the subtraction modification for assets on which 100% bonus depreciation was taken would be adjusted to equal the depreciation that would have been computed for federal purposes had the taxpayer elected out of bonus depreciation under IRC section 168(k)(7).

In addition, if bonus depreciation is taken on an asset at a percentage other than 30%, 50% or 100%, then the budget agreement legislation provides that a taxpayer would take the amount of federal depreciation permitted that is not the bonus depreciation component plus would take a subtraction modification of that federal depreciation amount multiplied by a ratio that adjusts with the federal bonus percentage taken on the asset. This change would apply to all categories of taxpayers, including individual and corporate taxpayers.

### **Reinstate franchise tax**

Under existing law, the Illinois franchise tax imposed on paid-in capital is to be fully phased out by gradually increasing the amount of tax liability considered exempt through 2024. The current phase-out level, effective during 2021, exempts the first \$1,000 of franchise tax liability, with larger exemption

amounts scheduled for future years until the full exemption from tax would apply starting in 2024. This phase-out schedule would be reversed under the budget agreement legislation, with the exemption level remaining at only \$1,000 through 2024 and beyond.

For more information, contact a KPMG State and Local Tax professional:

Brad Wilhelmson | [bwilhelmson@kpmg.com](mailto:bwilhelmson@kpmg.com)

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)