



Tax Treatment of IRC § 965 Repatriation Amounts for Tax Year 2017 for Flow-through Entities

The federal *Tax Cuts and Jobs Act* (Public Law 115-97) requires certain U.S. taxpayers to recognize mandatory deemed repatriation income as Subpart F income. In general, this is accomplished by U.S. shareholders recognizing post-1986 accumulated earnings and profits and deficits of certain foreign corporations under IRC § 965(a) and (b) (together referred to as the IRC § 965(a) inclusion amount). These taxpayers are then allowed to deduct a portion of the IRC § 965(a) inclusion amount under IRC § 965(c).

This Notice contains instructions for reporting these IRC § 965 amounts on the 2017 New York S corporation, partnership (including an LLC treated as a partnership for federal income tax purposes), and fiduciary (trusts and estates) New York State tax returns and attachments.¹ These instructions do not apply to reporting other amounts of Subpart F income, which must be reported according to the 2017 forms and instructions previously published.

- If a flow-through entity has IRC § 965 amounts in its 2017 tax year and has already filed its 2017 New York State tax return, it **must** file an amended return using these instructions.
- If a flow-through entity has IRC § 965 amounts in its 2017 tax year and has not yet filed its 2017 New York State tax return, it **must** use these instructions when filing its original return.

Individuals and corporations that received these IRC § 965 amounts from flow-through entities must refer to [N-Notice 18-4](#), *New York's Treatment of IRC § 965 Repatriation Income for Individuals for Tax Year 2017* and [N-Notice 18-7](#), *Tax Treatment of IRC § 965 Repatriation Amounts for Tax Year 2017 for New York C Corporations, Insurance Corporations, and Exempt Organizations*, for guidance on how to report these amounts on their 2017 tax returns.

General Form Instructions for Tax Year 2017

For tax year 2017, the Internal Revenue Service (IRS) requires all taxpayers that have income under IRC § 965 to complete and attach to their federal return an *IRC 965 Transition Tax Statement* that includes the IRC § 965(a) inclusion amount, IRC § 965(c) deduction amount, and the total federal net tax liability under IRC § 965, if applicable.² **Flow-through entities must use their federal *IRC 965 Transition Tax Statement* when following the instructions in this Notice.**

- Flow-through entities must include their distributive shares and pro rata shares of any IRC § 965 amounts from other flow-through entities when computing their federal *IRC 965 Transition Tax Statement*.

¹ These entities are considered and referred to as flow-through entities in this Notice.

² See I.R.S. Pub. No. 5292, Cat. No. 15018A (Apr. 6, 2018), IRC § 965(h)(6), and IRS *Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns*, Answer 9.

- The IRC § 965(a) inclusion amount is on line 1 of the *IRC 965 Transition Tax Statement*.
- The IRC § 965(c) deduction amount is on line 3 of the *IRC 965 Transition Tax Statement*.
- The net IRC § 965 amount is the IRC § 965(a) inclusion amount less the IRC § 965(c) deduction from the statement.
- A copy of the federal *IRC 965 Transition Tax Statement*, along with accompanying worksheets used to compute the IRC § 965 amounts, must be attached to the 2017 New York State tax return.

Specific Form Instructions for Flow-through Entities for Tax Year 2017

Flow-through entities reporting IRC § 965 amounts must use the following instructions, along with the general form instructions above, when completing these 2017 forms:

- Form CT-3-S, *New York S Corporation Franchise Tax Return*
- Form IT-204, *Partnership Return* and related forms:
 - Form IT-204-IP, *New York Partner's Schedule K-1*
 - Form IT-204.1, *New York Corporate Partners' Schedule K*
 - Form IT-204-CP, *New York Corporate Partner's Schedule K-1*
- Form IT-205, *Fiduciary Income Tax Return* and related forms:
 - Form IT-205-A, *Fiduciary Allocation*
 - Form IT-205-C, *New York State Resident Trust Nontaxable Certification*
 - Form IT-205-J, *New York State Accumulation Distribution for Exempt Resident Trusts*

Form CT-3-S

- *Form CT-3-S, Part 3, Computation of business apportionment factor*
 - New York S corporations must treat the net IRC § 965 amount as dividends from stock under Tax Law § 210-A.5(a)(2)(G) for purposes of computing the business apportionment factor (BAF).
 - When the 8% fixed percentage method election **is** in effect **and** the stock that generated the net IRC § 965 amount is a qualified financial instrument, 100% of the net IRC § 965 amount is included on Part 3, line 30, Column B, and 8% of such amount is included on line 30, Column A.
 - In all other instances, the net IRC § 965 amount is **not** included in the numerator or denominator of the New York S corporation's BAF.

Form IT-204 and related forms

- *Form IT-204, Section 8, New York modifications, lines 108 through 114*
 - Do not report any IRC § 965 amounts on these lines.
- *Form IT-204-IP, Partner's share of income, deductions, etc., line 11, Other income (loss)*
 - The partner's federal Form 1065, Schedule K-1, line 11, *Other income (loss)*, includes the partner's distributive share of the IRC § 965(a) inclusion amount. Enter the amount from the partner's federal Form 1065, Schedule K-1, line 11, in **column B**. Enter in **column C** the amounts from column B that are derived from or connected with New York State sources.
 - IRC § 965 amounts are only considered to be derived from or connected with New York State sources to the extent the stock of a corporation generating the IRC § 965 amounts was used in a trade or business in New York.
- *Form IT-204-IP, Partner's share of income, deductions, etc., line 13, Other deductions*
 - The partner's federal Form 1065, Schedule K-1, line 13, *Other deductions*, includes the partner's distributive share of the IRC § 965(c) deduction amount. Enter the amount from the partner's federal Form 1065, Schedule K-1, line 13, in **column B**. Enter in **column C** the amounts from column B that are derived from or connected with New York State sources.
 - IRC § 965 amounts are only considered to be derived from or connected with New York State sources to the extent the stock of a corporation generating the IRC § 965 amounts was used in a trade or business in New York.
- *Form IT-204-IP, Partner's share of New York modifications, lines 20 through 27*
 - Do not report any IRC § 965 amounts on these lines.
- *Form IT-204.1, New York Corporate Partners' Schedule K*
 - Do not report any IRC § 965 amounts on this form.
- *IT-204-CP, New York Corporate Partner's Schedule K-1*
 - Do **not** include IRC § 965 amounts on any lines **other than** line 54, *Other income (loss)* and line 56, *Other deductions*. IRC § 965 amounts are included on federal Form 1065, K-1, lines 11 and 13.

Form IT-205 and related forms

For New York State purposes, fiduciary filers (estates and trusts) **must** include the **entire** net IRC § 965 amount (including both the net IRC § 965 amount **not** distributed to beneficiaries **and** the net IRC § 965 amount **distributed** to beneficiaries) in *Other income* (on Form IT-205, Schedule A, line 50), even though only the net IRC § 965 amount distributed to a beneficiary is included in *Other income* reported on federal Form 1041, page 1, line 8.

To properly complete all IT-205 series forms listed above, Form IT-205 filers that have a net IRC § 965 amount **not** distributed to beneficiaries must follow the applicable instructions below:

- A **pro-forma** federal Form 1041 (with accompanying schedules) must be completed.
- The pro-forma federal Form 1041 must include, on page 1, line 8, *Other income*, the entire net IRC § 965 amount (including both the net IRC § 965 amount **not** distributed to beneficiaries **and** the net IRC § 965 amount **distributed** to beneficiaries).
- All IT-205 series forms listed above must be completed following the instructions for those forms, but using the amounts from the **pro-forma** federal Form 1041 (with accompanying pro-forma schedules) rather than the amounts from the federal Form 1041 filed with the IRS.
- A copy of the federal and pro-forma Form 1041 must be attached to the New York State 2017 tax return.

Note: An N-Notice is generally issued to announce a singular event, such as an update to a previously issued tax form or instruction, or to announce a new due date for filing returns and making payments of tax because of a natural disaster. The department does not revise previously issued N-Notices.