



## 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.<sup>1</sup> 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.<sup>2</sup> **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*.

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

<sup>2</sup> 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.