



New York's Treatment of IRC § 965 Repatriation Income for Individuals for Tax Year 2017

The federal *Tax Cuts and Jobs Act* (Public Law 115-97), signed into law on December 22, 2017, requires certain US taxpayers to recognize mandatory deemed repatriation income under Internal Revenue Code (IRC) § 965. For individuals, the net IRC § 965 amount is required to be included in federal adjusted gross income (FAGI), and consequently, New York taxable income. There is no New York exemption or deduction for this income for individuals (including S corporation shareholders). Unlike the federal law, which allows taxpayers to elect to pay the tax liability from the § 965 amount over 8 years, or, in the case of S corporation shareholders, defer the tax liability until specified triggering events happen in the future, individual taxpayers are required to pay the additional New York tax generated by the § 965 amount in the tax year it is recognized and included in FAGI.

The inclusion of the § 965 amount in New York taxable income may result in a substantial increase in the 2017 New York tax liability of individuals. The Department has determined that the enactment of Public Law 115-97 so late in the 2017 taxable year constitutes reasonable cause for taxpayers to underpay the portion of their tax liability attributable to IRC § 965 by the due date for the 2017 New York personal income tax returns. If the taxpayer receives a bill for the underpaid tax that includes a late payment penalty, the taxpayer may request a waiver of the late payment penalty and must supply the Department with a copy of the *IRC 965 Transition Tax Statement* as part of its request.

If the taxpayer provides this information and pays the remaining tax and applicable interest due, or enters into an installment payment agreement to pay the remaining tax and applicable interest due (<https://www.tax.ny.gov/pay/all/ipa.htm>), the Department may waive the late payment penalty.

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.