



STATE OF ARKANSAS

**Department of Finance
and Administration**

REVENUE LEGAL COUNSEL

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October 2, 2018

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

Via email only: [REDACTED]

RE: IRC Section 965
Legal Opinion 20180826

Dear [REDACTED]:

You have requested a legal opinion concerning IRC Section 965. Your email dated August 16, 2018, states:

The recently enacted federal tax reform bill created new IRC section 965, whereby certain corporations must impute an assumed amount of income from certain controlled foreign corporations attributable to undistributed earnings. This amount is treated as Subpart F income in 2017.

In our analysis of Arkansas law, it appears to us that Arkansas has not specifically conformed to new IRC section 965, and accordingly, this imputed income would not be included in Arkansas taxable income. Furthermore, the 965 income pickup is not reported as part of federal Form 1120, line 28; rather it is included on a separate from whereby the federal repatriation tax is determined.

Could you kindly confirm whether this analysis is consistent with the Department's analysis?

You have asked whether Arkansas has specifically conformed to new IRC section 965.

RESPONSE

No. As you are aware, Arkansas has a stand-alone tax code and must affirmatively adopt any applicable federal provisions automatically. As a "selective" conformity state, Arkansas does not conform to the new federal provisions. Absent any conformity legislation, Arkansas will continue

to only tax the income as the dividends are actually paid and will not allow the new federal deduction.

An unconstitutional delegation of the sovereign power of taxation occurs when the General Assembly attempts to delegate the authority to tax to an entity other than one of those specified in the Arkansas Constitution. The legislature cannot delegate its power to tax or *fix the tax rate*, except as provided in Ark. Const. art. 2, § 23. *Cf. City of Harrison v. Snyder*, 217 Ark. 528, 231 S.W.2d 95 (1950); *see also* Arkansas Constitution Art. 2, § 22. For example, the rates of tax for a corporation's income may not be made dependent on a federal law or rule that may be changed. Article 2, § 23 of the Arkansas Constitution creates a limited authority to delegate the power of taxation and setting the rates of tax to political and municipal subdivisions of the State.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or law could result in a different opinion. Please note that you are requesting information on behalf of an unidentified or anonymous client. Under the Department's Gross Receipts Rule GR-75, a taxpayer must be identified in order for an opinion to be binding upon the Department. Therefore, this legal opinion is issued for general information purposes only.

Sincerely,

Lisa Ables
Revenue Legal Counsel