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Revenue and Transportation Interim Committee
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# TAX CUTS AND JOBS ACT STATE IMPACTS: CORPORATE INCOME TAX

The Tax Cuts and Jobs Act (TCJA), enacted in 2017, made changes to the federal individual and corporate income taxes. This analysis summarizes the effects of the new law on Montana's corporate income tax; a separate document will summarize the impacts of individual income tax changes. The new law made significant changes to the corporate income tax by moving the U.S. from a system in which taxes are owed on worldwide income to a quasi-territorial system aimed at incentivizing corporations to locate economic activity within the U.S.

The following table summarizes provisions of the TCJA that affect corporate taxpayers and attempts to identify the state impact. As of this writing, the Internal Revenue Service has not released regulations for all provisions of the new law. Montana conforms to many provisions of the federal corporate income tax code. Additional IRS regulations will determine whether or not the state automatically conforms with portions of the TCJA. This document will be updated as more information is available.

| Provision | Summary[1] | Federal Code Section | State Conformity | State Taxpayer Impact | State Revenue Impact |
|---|---|---|---|---|---|
| Transition tax | One-time tax on post-1986 untaxed earnings of 10% owned foreign subsidiaries from periods of 10% US corporate ownership<br><br>15.5% rate on cash and cash-equivalent assets, 8% rate on remainder | Unrepatriated earnings under IRC Section 965(a) net of the deduction for a portion of the earnings under IRS Section 965(c) [subpart F income] | IRS guidance indicates this will be reported on a separate form; if included the income is likely eligible for a 100% deduction for worldwide filers and an 80% deduction for water's-edge filers | De minimis | De minimis |

[1] Unless otherwise indicated information is from: Andrew Phillips and Steve Wlodychak, "The impact of federal tax reform on state corporate income taxes" Prepared for the State Tax Research Institute, March 2018.

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| Provision | Summary[1] | Federal Code Section | State Conformity | State Taxpayer Impact | State Revenue Impact |
|---|---|---|---|---|---|
| Global intangible low taxed income (GILTI) | Tax on foreign earnings above a 10% rate of return on fixed assets of all controlled foreign corporations owned by the same US shareholder<br><br>Two parts: tax of 21% and deduction of 50% through 2025 and 37.5% after (effective rate of 10.5% through 2025 and 13.125% after) | IRC Section 951A (GILTI)<br><br>IRC Section 250 (deduction) | Assumed to be included in Form 1120 line 28 income but unclear where the deduction will be placed; income is likely eligible for a 100% deduction for worldwide filers and an 80% deduction for water's-edge filers | De minimis | De minimis |
| Foreign derived intangible income (FDII) | Tax on foreign sales of domestic corporations based on returns in excess of 10% of fixed assets<br><br>Two parts: tax of 21% and deduction of 37.5% through 2025 and 21.875% after (effective rate of 13.125% through 2025 and 16.40625% after) | IRC Section 250(a)(1)(A) | Assumed to be included in Form 1120 line 28 income but unclear where the deduction will be placed; income is likely eligible for a 100% deduction for worldwide filers and an 80% deduction for water's-edge filers | De minimis | De minimis |

| Provision | Summary[1] | Federal Code Section | State Conformity | State Taxpayer Impact | State Revenue Impact |
|---|---|---|---|---|---|
| Base erosion anti-abuse tax (BEAT) | Minimum tax paid by certain taxpayers with large payments to foreign related entities (annual average of minimum $500 million in gross receipts)<br><br>General rate of 10% before 2026 and 12.5% after; 11%/13.5% for banks and registered securities dealers | IRC Section 59A | No | None | None |
| Net interest expense limitation | Limits net interest expense deduction to 30% of adjusted taxable income plus business interest income for businesses with average gross receipts of greater than $25 million; carryfoward for deduction above limit | IRC Section 168(j) | Yes | Increases taxable income | Increase |
| Immediate expensing | Increases Section 179 expensing limit from $510,000 to $1 million with phase-out increase from $2,030,000 to $2.5 million;[2] eligibility for qualified improvement property and certain property that is part of a building (roof, HVAC, fire/security systems). | IRC Section 179 | Yes | Timing – shifts deduction earlier, decreases taxable income in short term | Timing – short-term decrease |

[2] Indexed for inflation after tax year 2018.

| Provision | Summary[1] | Federal Code Section | State Conformity | State Taxpayer Impact | State Revenue Impact |
|---|---|---|---|---|---|
| Bonus depreciation | 100% bonus depreciation in first year for certain property placed into service 9/27/17- 12/31/22 (then decreases 20 percentage points until no bonus after 2026)[3] | IRC Section 168(k) | Yes | Timing – shifts deduction earlier, decreases taxable income in short term | Timing – short-term decrease |
| Domestic dividends received deduction | 100% deduction for dividends for members of same consolidated group is unchanged; reduces deduction to 65% (from 80%) for 20% owned corporations and to 50% (from 70%) for less than 20% owned corporations | IRC Section 243 | Yes | De minimis | De minimis |
| Foreign dividends received deduction | 100% deduction for foreign-source dividends of 10% owned foreign subsidiaries (not available for capital gains or directly-earned foreign income) | IRC Section 245 | Yes | De minimis | De minimis |
| Amortization of research and experimentation expenditures | Change from immediate deduction for research and experimentation costs to deduction over 5 years for domestic expenditures and over 15 years for foreign expenditures; for tax years beginning after Dec. 31, 2021; applies to expenditures for software development | IRC Section 174 | Yes | Increases taxable income | Increase (but not until ~fiscal year 2022) |

[3] Tony Nitti, "Tax Geek Tuesday: Changes to Depreciation in the New Tax Law," *Forbes*, Jan. 2, 2018.

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| Provision | Summary[1] | Federal Code Section | State Conformity | State Taxpayer Impact | State Revenue Impact |
|---|---|---|---|---|---|
| Domestic production deduction repealed | Repeals deduction for qualified production activities for manufacturing and certain other activities such as construction, engineering, architecture, computer software production, and agricultural processing | IRC Section 199 | Yes | Increases taxable income | Increase |
| Like kind exchanges | Limits like kind exchanges to real property | IRC Section 1031 | Yes | Increases taxable income for like kind exchanges other than for real property | Increase |
| Net operating losses | Limits to 80% of taxable income, removes carryback provision, indefinite carryfoward | IRC Section 172 | No – Montana has its own NOL laws: for tax years after 12/31/2017, 3-year carryback with $500,000 limit, 10-year carryforward (amended in 2017) | None | None |