

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to global intangible low tax income  
and apportionment of investment income**

The Revenue Department hereby amends Chapter 54, “Allocation and Apportionment,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 422.68.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 422.33 and 422.63.

*Purpose and Summary*

Recent federal tax reform legislation, Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), created a new category of income, Global Intangible Low Tax Income (GILTI), which must be included in a taxpayer’s U.S. income. Beginning in tax year 2019, Iowa also requires taxpayers to include federal GILTI, after subtracting allowable federal deductions, if any, in the taxpayer’s Iowa net income. Where a business engages in its trade or business partly within and partly outside of Iowa, Iowa income taxes are imposed only on that portion of the business’s income reasonably attributable to its activities within Iowa. The amount of business income reasonably attributable to Iowa is determined using formulas provided either in the Iowa Code or in administrative rules adopted by the Department. Because GILTI represents a new category of income, it does not fit neatly into any of the existing categories of income for which the Iowa Code and rules provide methods of apportionment. Therefore, the Department is adopting these amendments to provide a formula for apportioning GILTI within and without Iowa.

In addition to providing an apportionment formula for GILTI, the amendments include some cleanup of rule 701—54.2(422), the existing rule for the apportionment of investment income. Subrule 54.2(2) was superseded by subrule 54.2(3) in 1995, but subrule 54.2(2) remains in rule 701—54.2(422) today. These amendments strike the superseded text of subrule 54.2(2) and replace it with reorganized and expanded information about when investment income must, or may by election, be included in the Iowa apportionment factor and about when and how the election may be made or changed.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 1, 2020, as **ARC 4843C**.

The Department received a total of four comments. All commenters stated their opposition to the proposed rule making. However, all commenters’ arguments focused heavily on whether GILTI should be included in the tax base at all, rather than on the apportionment method prescribed in the rule making. All commenters appeared to agree that current statutory language does require that GILTI be included in the Iowa tax base. Some commenters asserted that the statute should not be enforced because it may be subject to constitutional challenge. Others argued that the current statute could be interpreted differently to allow a larger deduction for GILTI, or simply that the Legislature should amend the statute to exclude more or all of GILTI. While the Department respects these arguments, it cannot stand in the place of either the Legislature or a court and must enforce the law as written.

Two commenters requested that the Department use a different apportionment method for GILTI from the one provided in the Notice. Both requested that the Department adopt what is commonly referred to

as “full factor” apportionment. The Department considered using a “full factor” apportionment method, both before drafting the original Notice and after receiving the comments. The comments provided no new information that would change the Department’s position. The apportionment method prescribed in the Notice and adopted herein is more consistent with other states’ treatment of this income, and as one commenter noted, the “full factor” apportionment method the commenters requested would be “very complex, if not impossible” to administer.

No substantive changes from the Notice have been made. A typographical error in subparagraph 54.2(3)“f”(4) has been corrected.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on February 5, 2020.

#### *Fiscal Impact*

This rule making has no fiscal impact beyond that of the legislation it is intended to implement. The income affected by this rule making is included in Iowa income as a result of 2018 Iowa Acts, Senate File 2417. The fiscal impact statement for Senate File 2417 did not specifically address the fiscal impact of these items of income, but did include them in the overall impact of the legislation. In 2019, the Department performed a fiscal analysis for legislation that would have effectively removed most of the income covered by this rule from Iowa income tax. The Department can provide a copy of that analysis upon request.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

#### *Effective Date*

This rule making will become effective on April 1, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—54.2(422) as follows:

#### **701—54.2(422) Allocation or apportionment of investment income.**

**54.2(1) *Investment business income.*** The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents, ~~and~~ royalties, ~~and~~ other investment income shall be apportioned as business income to the extent the income was earned as a part of a corporation’s unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue*

*Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**54.2(2) Inclusion in the apportionment factor:**

*a. Income which must be included.* All investment business income described in subrule 54.2(3), including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See 701—subrule 52.1(4).

*b. Income included by election.* All other investment business income, including capital gains or losses, described in subrule 54.2(3) may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election would result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment business income of the taxpayer subject to the election.

(1) Written election. If the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made with the taxpayer's income tax return in the first year in which the taxpayer has such income. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the department to change the election. If the taxpayer fails to make a written election, the fact that investment business income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

(2) Changing the election. If a taxpayer wishes to change the taxpayer's election to include or exclude investment business income in the taxpayer's Iowa apportionment factor, the taxpayer must request the department's permission to change the election not less than 90 days prior to the due date of the return for the tax year in which the taxpayer wishes the change to take effect. Permission to make a change in this election shall only be granted if the department determines that the change will more accurately reflect the net income reasonably attributable to Iowa.

All business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include business investment income where the election would result in an understatement of net income reasonably attributable to Iowa.

For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

*a.*—~~Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest~~

income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

~~EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. Ten thousand dollars would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.~~

~~b.—Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.~~

~~c.—Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.~~

~~d.—Rental income. All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.~~

~~e.—Royalty income. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.~~

~~f.—Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:~~

~~(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.~~

~~(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:~~

~~The property has a situs in this state at the time of sale; or~~

~~The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.~~

~~(3) Gains or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.~~

~~(4) All gains or loss shall be included in the denominator of the activity ratio.~~

~~Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.~~

~~g.—Other miscellaneous income. All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.~~

~~h.—Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.~~

~~Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.~~

~~**54.2(3) *Apportionment method by category of investment income.*** For tax years beginning on or after January 1, 1995, all investment income that is business income, including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the investment income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See subrule 52.1(4). All other investment business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election could result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment income of the taxpayer subject to the election.~~

~~For a tax year which begins on or after January 1, 1995, if the taxpayer has investment income subject to an election under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income subject to election under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for future years.~~

The computation of the business activity formula associated with investment business income is as follows where the investment business income is required to be included in the business activity formula or where an election for inclusion has been made:

*a. Interest income from accounts receivable.* If an inclusion election is made, accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. \$10,000 would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

*b. Interest income other than accounts receivable.* All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula to the extent that the interest-bearing asset is an integral part of some business activity occurring regularly in Iowa. If the interest-bearing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the interest therefrom (except nontaxable interest income) shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns interest income from loans to affiliated corporations, commercial paper, bonds issued by multistate corporations, and federal income tax refunds. The interest income is business income. None of these interest-bearing assets are an integral part of some business activity occurring regularly within or without Iowa. Accordingly, the interest income produced by such assets is subject to an election of inclusion in or exclusion from the business activity formula.

*c. Dividend income.* All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula to the extent that the dividend asset is an integral part of some business activity occurring regularly in Iowa. If the dividend asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the dividends shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns dividend income from dividends payable from a mutual fund. The dividend income is business income. The dividends are not an integral part of some business activity occurring regularly within or without Iowa. Assume that the taxpayer had also earned interest income which was business income and which was not an integral part of some business activity occurring regularly within or without Iowa and that the taxpayer had included that interest income in the business activity formula. Under these circumstances, the taxpayer must also include the dividend income in the business activity formula. If no inclusion of investment business income had been made in the business activity formula, the taxpayer would exclude the dividend income from the formula.

*d. Rental income.* If an inclusion election is made, all rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

*e. Royalty income and licensing fees.* All royalty income and licensing fees from intangible personal property determined to be business income shall be included in the numerator of the business activity formula to the extent that the royalty or licensing asset is an integral part of some business activity occurring regularly in Iowa. If the royalty or licensing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the royalties or licensing fees shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: A, a corporation with a commercial domicile outside of Iowa, derives royalties from a trade name that is used by other corporations doing business in Iowa in their Iowa businesses. Since the royalty asset is an integral part of an Iowa business activity, A must include the royalties associated with Iowa business activity in the numerator of A's business activity formula.

EXAMPLE: The taxpayer, a corporation with a commercial domicile in Iowa, derives license fees from others who do business solely outside of Iowa. The license fees are business income. The license fees are an integral part of some business activity carried on regularly by the others outside of Iowa. The taxpayer must include the license fees in the business activity formula. If the taxpayer also had other license fees which were business income and which were not an integral part of some business activity occurring regularly within or without Iowa, these other license fees would be subject to an election of inclusion in or exclusion from the business activity formula.

If an inclusion election is made, all royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

*f. Gains or losses.* Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state and if an election of inclusion has been made.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if an election of inclusion has been made and if the property has a situs in this state at the time of sale, or the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gain or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator of the business activity formula to the extent that the intangible personal property is an integral part of some business activity occurring regularly in Iowa in the tax year that gain or loss is recognized. If the intangible personal property is not an integral part of some business activity occurring regularly in or outside of Iowa in the tax year that gain or loss is recognized and if an election of inclusion has been made, the gain or loss shall be included in the numerator if the taxpayer's commercial domicile is in this state.

EXAMPLE: The taxpayer carries on its trade or business within and without Iowa. The taxpayer has patents which it licenses others to use in activities within and without Iowa. The patents are an integral part of business activity occurring regularly within and without Iowa. The taxpayer receives royalty income for the use of the patents. The taxpayer sells the patents and realizes a capital gain. The capital gain from the sale of the patents cannot be segregated by geographical source. Assume that the taxpayer is on a calendar tax year. Assume that the sale occurred on July 1. From January 1 to July 1, 5 percent of the royalties were attributable to some business activity regularly occurring in Iowa. The taxpayer should include 5 percent of the capital gain in the numerator of the business activity formula.

(4) All gain or loss shall be included in the denominator of the business activity ratio if an election of inclusion has been made or if the gain or loss is required to be included in the business activity ratio.

~~Noninclusive~~ Nonexclusive examples of gains or losses from the sale, exchange, or other disposition of real or tangible or intangible property, which may not be included in the computation of the business activity ratio, because to do so would result in an understatement of net income reasonably attributable to Iowa ~~and would include~~, are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code and the gain recognized under Section 631(a) of the Internal Revenue Code.

*g. Other miscellaneous income.* All other miscellaneous income determined to be business income which is not subject to an election or which is the subject of a proper election of inclusion shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense. The miscellaneous income shall be included in the numerator of the business activity formula if the income is from an Iowa source.

*h. Other investment income.* All other investment income shall be included in the numerator of the business activity formula to the extent that the intangible personal property which produced that income is an integral part of some business activity occurring regularly in Iowa. If the intangible personal property is not part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the other investment income shall be included in the numerator if the taxpayer's commercial domicile is in this state.

*i. Global intangible low tax income (GILTI).* The net amount of global intangible low tax income (net GILTI) shall be included in the numerator of the business activity formula to the extent that the income arises from the taxpayer's ownership of controlled foreign corporation(s) (CFCs) that are an integral part of some business activity occurring regularly in Iowa.

(1) If no portion of the net GILTI is part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the net GILTI shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(2) If net GILTI is either required to be included in the Iowa apportionment factor or included by election, the amount included in the denominator shall be the taxpayer's entire net GILTI.

(3) "Net GILTI" means the amount of global intangible low tax income as defined in Internal Revenue Code (IRC) Section 951A, less the deduction allowed under IRC Section 250(a)(1)(B) (if any).

*i-j. Activity ratio.* Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

**54.2(4)** Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, gross-up (Section 78 of the Internal Revenue Code) shall be considered to be nonbusiness

income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code Supplement sections 422.32(2) and 422.33(1).

ITEM 2. Adopt the following **new** paragraph **59.28(2)“p”**:

*p.* The net amount of global intangible low tax income (net GILTI) shall be included in the numerator of the business activity formula to the extent that the income arises from the taxpayer’s ownership of controlled foreign corporation(s) (CFCs) that are an integral part of some business activity occurring regularly in Iowa.

(1) If no portion of the net GILTI is part of some business activity occurring regularly in or outside of Iowa but the income is determined to be business income, the net GILTI shall be included in the numerator if the taxpayer’s commercial domicile is in this state.

(2) Where net GILTI is included in the Iowa apportionment factor, the amount included in the denominator shall be the taxpayer’s entire net GILTI.

(3) “Net GILTI” means the amount of global intangible low tax income as defined in Internal Revenue Code (IRC) Section 951A, less the deduction allowed under IRC Section 250(a)(1)(B) (if any).

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