

McDermott's Take on State Tax after Reform

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Due to the current impact and the likelihood that states will consider legislation and agency guidance addressing federal tax reform implications for state business taxes, a united, effective, nationwide advocacy effort is needed to ensure the issues are consistently addressed on a multi-state basis. In preparation for anticipated ramifications, a multi-state coalition will need to consider the subjects summarized below.

How Legal Experts Can Help You:

- Formation of a coalition of companies and industry trade organizations dedicated to proactively addressing state tax issues raised by federal tax reform on a nationwide basis
- Identify and track, in real time, proposed state legislative and regulatory responses to federal tax reform
- Analyze proposed state reforms and develop substantive amendments and comments
- Develop and implement advocacy campaigns to secure favorable legislative and regulatory outcomes, including
 - Preparation of all advocacy collateral
 - Organization of on the ground advocacy, including retaining in-state advocates where needed
 - Activating allied organizations to ensure broad support
- Provide support concerning the proper reporting of state responses to federal tax reform on company financial statements

Coalition Goals:

- Prevent state legislation expanding tax base through decoupling from federal deductions
- Support state legislation adopting comprehensive federal reform conformity, with appropriate deviations
- Identify and remedy Commerce Clause issues
- Encourage states revenue department to publish guidance on issues such as definitional questions, apportionment approaches and problems with different group calculations
- Identify and act on opportunities to address related issues through state responses to federal reform
- Prepare to address potential nexus changes in response to *South Dakota v. Wayfair*

Potential Issues:

Deferred foreign earnings transition tax:

- Inclusion at state level in year one
- States decoupling from deduction
- Apportionment issues

GILTI and FDII:

- Inclusion in state taxable income
- States decoupling from deduction
- Apportionment issues

100% Expensing:

- States decoupling from deduction
- What depreciation regime to use if state decouples

Interest Expense Limitation:

- Failure to decouple could lead to a tax increase

- Interaction with state addbacks

NOL Limitations:

- Advocating for state changes in situations where the 80% NOL limitation automatically impacts state tax liability
- Need to guard against states affirmatively imposing an 80% limitation
- Potential for advocating that states enact unlimited carryforward period

BEAT:

- Need to guard against states mimicking this alternative minimum tax

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