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Testimony Before the New Hampshire Committee on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax

Why New Hampshire Should Not Adopt Mandatory Worldwide Combined Reporting

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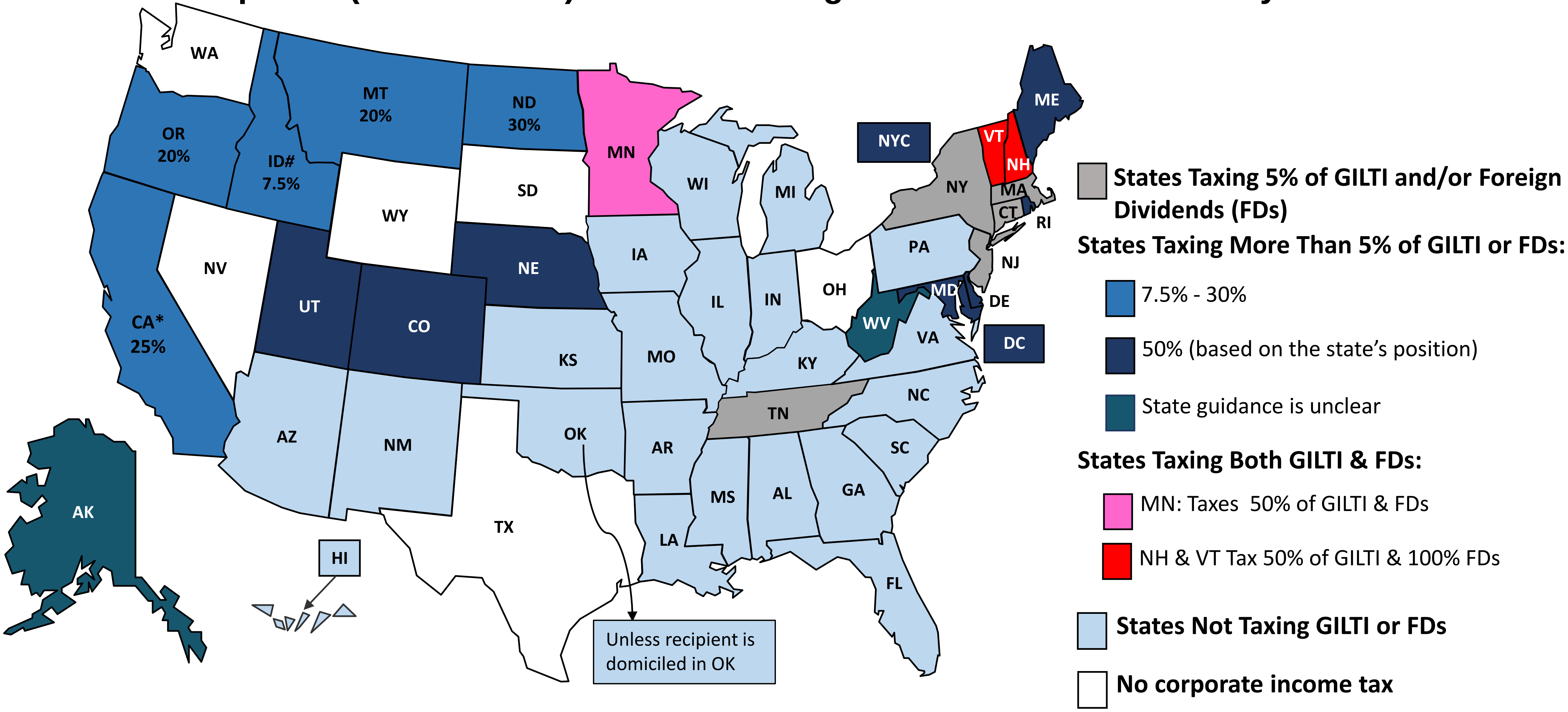
New Hampshire (and Vermont) Tax More Foreign Source Income Than Any Other State



**** CA taxes 25% of foreign dividends***

***Disclaimer**: This map is based on the best available information, but several states do not have clear guidance on GILTI. Therefore, this information should be used for general guidance and not relied upon for compliance.*

Source: Council On State Taxation (COST)

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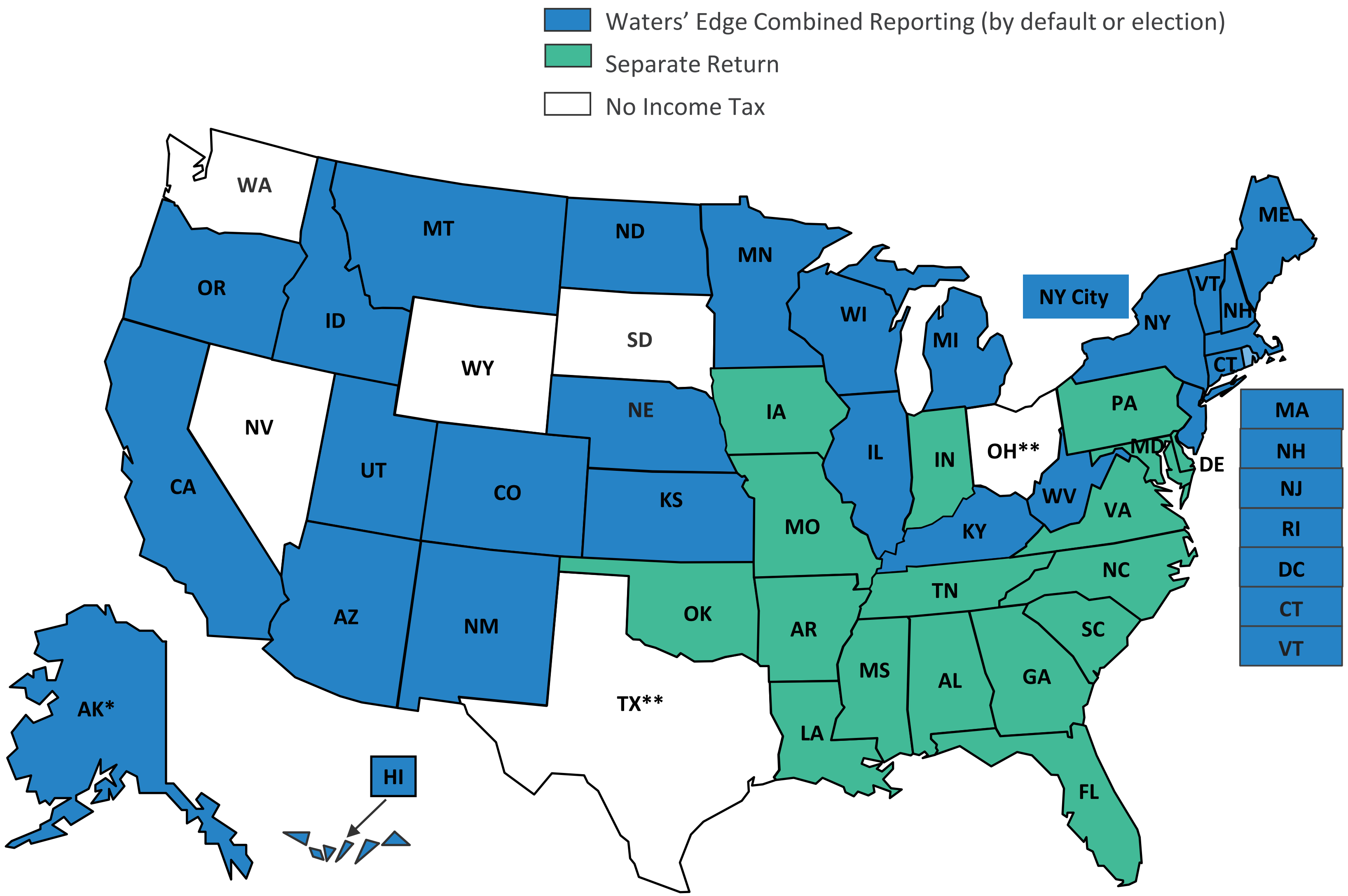
No State Currently Requires Mandatory Worldwide Combined Reporting



*Alaska has worldwide combined reporting for oil and gas producers

**Combined reporting for a tax based on gross receipts

Disclaimer: This information should be used for general guidance and not relied upon for compliance.

Source: Council On State Taxation

Worldwide Combined Reporting – Administrative Burdens

Worldwide Combined Return

- Determination of the composition of the group.
- Starting point for corporate income tax is federal taxable income.
  - Foreign entities do not compute federal taxable income.
    - Reasonable approximation is financial statement income.
      - Mismatch of income
      - Use of IFRS vs. GAAP
    - Required to make adjustments for previously taxed foreign income.
- Depreciation method, NOL, flow through entity and other state/global income differences.
- Currency exchange rates for foreign entities income.
- Computational issues with gains and losses resulting from the sale of foreign assets
- Utilization of foreign entities' tax attributes.

Water's-Edge Combined Return

- Determination of the composition of the group.
- Starting point for corporate income tax is federal taxable income.
  - The required data is available from the federal return.
  - GILTI and foreign dividends information may be taken from the federal return information.
    - No need to adjust for previously taxed income.
- State depreciation starts with federal depreciation adjusted for the specific state requirements.
- All data points are in U.S. dollars.
- Federal tax data may be used to compute gains and losses from the sale of assets.
- Use of combined members tax attributes is governed by state statutes.

Worldwide Combined Reporting – Audit Issues

- Supporting the composition of the unitary group.
- Obtaining the supporting income, expense and apportionment data for foreign affiliates.
  - The difficulty is compounded if the unitary group has a foreign parent.
- The acceptance of assumptions on the computation of the foreign entities' taxable income.
  - Absent a detailed statute setting forth the methodology for computing the taxable income of a foreign entity this is a company-by-company negotiation.
- State's auditors will be required to understand foreign financial accounting rules.
- State's auditors will be required to understand the foreign governance rules for entity structure, *e.g.*, what is considered a pass-through entity in a foreign jurisdiction.
- State's auditors will be required to understand the foreign tax structures, *e.g.*, what foreign taxes will be characterized as an income tax, gross receipts tax or a privilege tax.
- Apportionment includes the factors of the foreign entities based on financial statements.
  - Sales will be what is reported on the books without adjustments for exchange rates.
  - Raises issues with how VAT and other similar types of taxes are treated for sales factor purposes.
- Length of time to complete the audit.

Worldwide Combined Reporting – Policy Issues

- **Administrative Complexity** – Worldwide combined reporting is, by definition, complex, requiring extensive fact-finding to determine the composition of the global “unitary group” and to calculate foreign income and apportionment factors. This complexity results in unnecessary and significant compliance costs for both taxpayers and the State.
- **Policy Outlier** – New Hampshire’s adoption of mandatory worldwide combined reporting would be out of step with all other states, the federal government, and all other nations.
  - The U.S. Supreme Court in the 1980s upheld worldwide combined reporting as constitutional, but no state in the last three decades has mandated this reporting methodology for all businesses.
  - The federal government, with the enactment of the Tax Cuts and Jobs Act in 2017, moved away from its prior worldwide tax regime to a quasi-territorial tax system that includes more limited taxation of foreign source income principally through the inclusion in the corporate tax base of 50 percent of GILTI.
  - The current OECD Pillar 1 and 2 proposals for reforming international taxation steer clear of any consideration of mandatory worldwide combined filing.
  - Indeed, Korea is the only other advanced nation where foreign income is taxed at a subnational level (not a national level), and Korea does so on a very limited basis.
- **New Hampshire Business Tax Burden** – New Hampshire currently imposes a larger relative tax burden on business than most states. For FY21, the business share of state and local taxes in New Hampshire equaled 47.9% compared to the national average of 43.6%.
- **Negligible and Uncertain Revenue Impact** – New Hampshire already taxes most of the foreign income of U.S. multinationals doing business in New Hampshire – on a current or deferred basis. Estimates by groups such as ITEP of potential revenue gains from adopting WWCR are highly inaccurate because of failure to take into consideration recent federal and international tax reforms and the extent foreign source income is currently taxed by the State.