Debbie Longman

From: Jake Farmer <Jake@frf.org>
Sent: Monday, October 1, 2018 2:39 PM
To: CITReview
Cc: Melissa Ramba; Scott Shalley
Subject: CIT Review Comments
Attachments: FRF TCJS Comments.GILTI letter.pdf

To whom it may concern:

The Florida Retail Federation respectfully submits the following comment letter urging the state to decouple from the newly amended limitations on interest expense provided in IRC §163(J).

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Florida Retail Federation

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October 1, 2018

Via Electronic Mail

Corporate Income Tax Review
c/o Debra Longman, Director of Legislative and Cabinet Services
Department of Revenue
P.O. Box 5906
Tallahassee, Florida 32314-5906

Re: Florida Retail Federation Comment on Corporate Income Tax Review

Dear Ms. Longman:

On behalf of the Florida Retail Federation (FRF), I strongly advise the Department decouple from the newly amended limitations on interest expense provided in IRC §163(J). Failure to decouple from this provision will punish retailers and other business establishments who borrow capital in order to invest in their Florida operations. I also advise the Department to provide clarification that Global Intangible Low-Taxed Income (GILTI) may be excluded from the state base for purposes of Florida's Corporate Income Tax. Such clarification would be consistent with the historic policy of not taxing income from international sources and avoid broader constitutional questions, which are sure to arise.

The Florida Retail Federation represents a diverse collection of retailers ranging from small, locally owned operations to large, international brands and is the voice for 270,000 retail establishments located throughout the state of Florida. FRF members are constantly looking to grow their businesses and occasionally have to make difficult choices in light of ever-increasing competition.

Interest Deduction Limitation

For many retailers, the interest deduction is a strong incentive for expansion and capital investment here in the State of Florida. If the state does not decouple from the limitation on interest expense, many of our smaller members may have to forego growth opportunities while other members may decide to invest in states that have already decoupled from this provision.

Further, leaving the limitation on interest expense intact presents a significant tax increase to Florida retailers and poses a complex administrative challenge for a sector with significant overhead costs. When combined with Florida's decoupling from bonus depreciation, the inclusion of the interest deduction is a one-two punch. Taken together, these outcomes hurt Florida's image as a tax-friendly state for large and small businesses alike.

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Global Intangible Low-Taxed Income

The federal government imposes a tax on GILTI at a rate of 10.5% in order to recapture income taxed at an artificially low rate largely due to tax credits. However, Florida does not recognize foreign tax credits and therefore all GILTI income would be taxable for purposes of Florida's Corporate Income Tax. The sudden inclusion of GILTI under Florida's Corporate Income Tax would be a significant tax increase for FRF members with an international presence, who are also some of Florida's largest employers. Similar to the discussion above, this outcome could cause large retailers to shift operations to one of the many states who have already decoupled from the Tax Cuts and Jobs Act's GILTI provisions.

The inclusion of GILTI in the corporate tax base also raises significant constitutional concerns. An attempt by Florida to tax foreign-earned income would likely be met with a lawsuit under the Commerce Clause of the U.S. Constitution, and defense of such litigation would ultimately cost taxpayers even more.

In conclusion, I urge the Department to encourage investment in Florida by decoupling from the limitation on interest expense provided in IRC §163(J) and keep Florida a tax-friendly state by excluding GILTI from its Corporate Income Tax base.

Sincerely,

R. Scott Shalley
President & CEO
Florida Retail Federation