Debbie Longman

From: Evan Hoffman <ehoffman@ofii.org>
Sent: Wednesday, June 13, 2018 3:10 PM
To: CITReview
Subject: CIT Review Comments
Attachments: OFII comment letter to Corporate Income Tax Review.pdf

To whom it may concern,

Please find attached comments from the Organization for International Investment (OFII) urging the state to decouple from IRC Section 163(j).

Thank you!

Best regards,

Evan Hoffman
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OFII | GLOBAL INVESTMENT GROWS AMERICA'S ECONOMY

June 13, 2018

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

To whom it may concern:

On behalf of the Organization for International Investment (OFII), I urge the state to decouple from the new interest expense deductibility limitations under IRC §163(j). Decoupling from this provision would remove a corporate tax increase, alleviate compliance concerns and ensure the state remains competitive for international investment.

OFII is a trade association representing the U.S. subsidiaries of international companies, including over 80 Florida employers. OFII's membership list is enclosed. OFII advocates for non-discriminatory treatment of U.S. subsidiaries and promotes policies that will encourage them to grow in the United States.

International companies are significant to the U.S. economy. They employ 327,200 Florida workers.[1] In the past five years, jobs provided by international firms in Florida grew by 40.5 percent vs. the state's overall private-sector growth rate of 15.6 percent. Nationwide, international companies produce 23 percent of U.S. exports, fund 16 percent of U.S. research and development efforts, account for 20 percent of the U.S. manufacturing workforce and pay 24 percent higher compensation than the economy-wide average.

Enclosed is OFII's policy principles document, which outlines several reasons for why states should decouple from IRC §163(j) to ensure international competitiveness. This issue is even more important to Florida for the following reasons:

- Conforming to IRC §163(j) represents a significant corporate tax increase by limiting taxpayers' ability to deduct interest expense. Analysis shows that conforming to IRC §163(j) would increase the federal corporate income tax base by 6.4 percent.[2] In any year, base broadening to this extent would be realized only after thoughtful debate in the state legislature to understand whether higher taxes achieve worthwhile policy goals.

- Congress limited interest deductibility to pay for a lower federal corporate income tax rate, accelerated depreciation and immediate expensing. Florida should therefore

[1] Data is from the U.S. Department of Commerce's Bureau of Economic Analysis. Released October 2017.
[2] "The Impact of Federal Tax Reform on State Corporate Income Taxes," prepared by EY for the Council on State Taxation, and its affiliate, the State Tax Research Institute. Released March 5, 2018.

decouple from IRC §163(j) because the state already decouples from federal bonus depreciation and expense deductions to the extent that such deductions exceed $128,000.[3]

- Florida taxpayers file state returns on a separate entity basis, but are preparing to determine interest limitations for federal returns on a federal consolidated group basis.[4] This ambiguity may make state compliance to IRC §163(j) difficult for taxpayers, lead to tax increases and increase administrative costs for taxpayers and tax authorities.

- Florida has excelled at attracting international investment. More than 1,210 global employers have operations in Florida, and almost 5 percent of the state's workforce is employed by international investors. Conforming to IRC §163(j) would increase the cost of capital and raise taxes on Florida employers. By decoupling, Florida would keep its competitive edge.

Other states are seizing the opportunity to improve their business environments this year. Connecticut, Georgia, Indiana, Tennessee and Wisconsin decoupled from the interest expense limitations in IRC §163(j).[5] In addition, legislation decoupling from IRC §163(j) also passed the South Carolina House unanimously and will be considered in a special session on June 27.[6] As many of these states compete with Florida for jobs and investment in the region, the state should join these states in decoupling from IRC §163(j) to remain competitive.

Thank you for considering this request. If you have questions, please contact me at ehoffman@ofii.org or (202) 659-1903.

Sincerely,

Nancy McLernon
President and CEO, Organization for International Investment

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[3] H.B. 7093, Sec. 2, amending Fla. Stat. §220.13(1)(e)1.

[4] The U.S. Treasury Department issued a notice explaining that they intend to issue rules regarding how interest limitation and its carryforward will be determined at least on a federal consolidated group basis. However, even with this notice, Florida taxpayers file on a separate entity basis, which will differ from their federal consolidated group, creating complexities and uncertainties.

[5] Georgia decoupled from IRC §163(j) in H.B. 918, enacted March 2. Wisconsin decoupled from IRC §163(j) in A.B. 259, enacted April 3. Indiana decoupled from IRC §163(j) in H.B. 1316, enacted May 14. Connecticut decoupled from IRC §163(j) in S.B. 11, enacted May 31. Tennessee decoupled from IRC 163(j) in SB 2119, enacted May 21.

[6] The South Carolina House passed H.B. 5341 unanimously, which decouples from IRC §163(j). This bill is part of a special session to be held on June 27.

Decouple from IRC §163(J) to Be Competitive for International Investment

International Investment Grows America's Economy

- **Supporting Millions of High-Quality Jobs:** International companies employ 6.8 million U.S. workers providing compensation that is 24 percent higher than the economy-wide average.

- **Growing America's Manufacturing Sector:** International firms are responsible for one-in-five of all U.S. manufacturing jobs. In fact, two-thirds of the manufacturing jobs created in the past few years can be attributed to FDI.

- **Fueling American Innovation:** American scientists and engineers employed by international companies are leading our nation's innovation advantage. International employers spend more than $57 billion on research and development activities, or 16 percent of America's private-sector R&D.

- **Exporting American-Made Goods:** U.S. workers of international companies produce 23 percent of U.S. exports, shipping nearly a billion dollars in goods a day to customers around the world.

- **Importing World-Class Workforce Training Programs**: These companies also "import" world-class workforce training programs and help spur U.S. productivity.

- **FDI Makes America's Economy More Resilient:** After all, international companies help broaden the U.S. economy, open new markets and give other countries a stake in America's economic success.[1]

Conformity Done Right Will Increase Competitiveness for International Investment

The new federal tax law drops the federal corporate income tax rate to 21 percent and adds new base broadeners. Given this seismic shift in tax policy, conformity to all Internal Revenue Code provisions could have unintended state-level policy consequences as federal base broadeners were carefully considered and implemented alongside the rate reduction to achieve policy objectives. Without a review of these state-level unintended consequences, conforming to the new tax code in its entirely could reduce a state's international competitiveness.

Therefore, states should decouple from the new interest expense limitations imposed under IRC §163(j) to best position themselves for international investment. Decoupling from IRC §163(j) is also smart tax policy for the following reasons:

- States would act consistently with the federal tax law's policy objective of increasing competitiveness for investment and spurring economic growth and job creation.

- States would remove threats of multiple taxation and ensure fair apportionment of income.

- States would avoid creating computational uncertainty and unnecessary administrative complexity for both taxpayers and taxing authorities.

[1] All data is the latest available from the U.S. Department of Commerce, released October 2017.

States Should Decouple from the New Interest Expense Limitations Under IRC §163(J)

The new federal tax law limits interest deductibility to 30 percent of a taxpayer's adjusted taxable income. This rule applies to almost all taxpayers[2] and to both related party and unrelated party interest expense. It also allows for unlimited carryforwards of disallowed interest expense. States should decouple from IRC §163(j) for the following reasons:

- **Taxpayers could face higher effective state tax rates through conformity to IRC §163(j)**: Congress imposed tighter interest expense limitations to pay for a lower federal tax rate, accelerated depreciation and immediate expensing. Unless states also lower rates and conform to the new federal bonus depreciation and immediate expensing rules, conforming to IRC §163(j) would misalign with congressional intent and could increase every state taxpayer's effective tax rate, as described below.[3]
    - First, taxpayers face tighter interest limitations to help pay for a lower federal corporate income tax rate. A corporate taxpayer's state tax liability may increase significantly if a state conforms to IRC §163(j) without a simultaneous lowering of the state's corporate income tax rate.
    - Second, as a preliminary matter, states that decouple from the new bonus depreciation and immediate expensing rules in IRC §168(k) and §179 should also decouple from the IRC §163(j) interest limitations. Congress clearly intended the interest expense limitation rule to work concurrently with new bonus depreciation and immediate expensing rules. Together, these rules encourage businesses to invest immediately in the United States, but without over-relying on debt financing. However, most states decouple from federal bonus depreciation schedules and immediate expensing rules. Therefore, conforming to §163(j) without conforming to IRC §168(k) and §179 would misalign with Congress's intent and result in corporate state tax increases.
- **Taxpayers and tax administrators would face significant federal and multistate complexity if the states conform to IRC §163(j)**: The new federal tax law applies the new 30 percent interest deductibility limitation at the "taxpayer" level – a term undefined in the statute. To date, the U.S. Department of Treasury has not issued guidance regarding how the interest limitation and its carryforward will be determined.[4] Therefore, many taxpayers could be confused by how the interest limitation will apply because their state filing group may differ from their federal filing group.[5] This ambiguity would make state compliance to IRC §163(j) almost impossible for taxpayers. States that conform to IRC §163(j) could end up increasing administrative costs for both taxpayers and taxing authorities.

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[2] It does not apply to real estate, public utilities, farmers or "floor plan financing" (essentially, automobile dealership inventory carrying costs).
[3] *The Impact of Federal Tax Reform on State Corporate Income Taxes*, prepared by EY for the Council on State Taxation, and its affiliate, the State Tax Research Institute. Released March 5, 2018. The report shows that state corporate income tax bases will increase by 12 percent on average over a 10-year period, with significant variations between the states. The report cites conformity to IRC §163(j) as one provision, among many cited, that will contribute to this increase in state corporate income taxes.
[4] While guidance has yet to be issued, federal tax policy officials have publicly announced that the U.S. Treasury Department will issue guidance confirming that the interest limitation and its carryforward will, at a minimum, be determined at the federal consolidated group level. They have also indicated that the guidance will provide clear rules for allocating the interest expense limitation, consistent with other long-standing and existing consolidated group attribute allocation rules (e.g., deferred intercompany transactions, consolidated IRC §382 loss limitation rules, separate return limitation year (SRLY) rules) intended to fairly allocate the limitation among members of the group respecting separate entity reporting. However, even with this guidance, a taxpayer's state filing group, which may be on a standalone or a group basis, may differ from its federal filing group. This would create similar complexities and uncertainties.
[5] A taxpayer's state reporting group often looks different than its federal filing group. For instance, over twenty states require taxpayers to file separate company returns under which group reporting is not allowed. In many cases, a taxpayer's state reporting group includes many more entities than its federal filing group. For example, depending upon a taxpayer's unitary group, members of multiple federal consolidated groups could be members of the same state reporting group, or the state could require worldwide or water's-edge reporting that includes foreign corporations that are expressly excluded from the federal consolidated group. A taxpayer's state group could also include fewer or more entities than its federal group. For instance, the federal group may consist of multiple state unitary groups or a state may only allow a group report for corporations which have nexus with the state or may exclude corporations engaged in certain kinds of business from the group because they are not subject to state income taxes (e.g., insurance companies and banks).

- **In addition to the complexity, conforming to IRC §163(j) may result in tax costs unintended by the federal provision**: If the U.S. Department of Treasury clarifies that IRC §163(j) should apply on a group basis, state application of IRC §163(j) on any other basis may result in an interest disallowance where none would occur at the federal level. Companies structure their debt financing knowing that their taxable income is computed on a consolidated basis at the federal level, which is why Treasury is expected to clarify that the new IRC §163(j) limit will apply at least at a consolidated level. If states were to apply these limits differently, taxpayers could see more significant limitations on interest expense deductibility or higher state taxes. In addition, applying limitations differently would create complex and costly administration for both taxpayers and taxing authorities.

- **Taxpayers' interest deductibility is already limited by states, making conformity to IRC §163(j) unnecessary**: Most states already limit or otherwise disallow interest deductions for their own tax policy purposes. In many cases, the states were far ahead of the federal government in this area and their rules may be even more restrictive. For example, many states limit the deductibility of interest paid to related parties through addback requirements. These are effective tools that prevent state tax base erosion. They also provide narrow exceptions, which include among others, for interest paid to related parties in countries that have a comprehensive tax treaty with the United States or that is subject to tax by another jurisdiction. It is unclear how the new interest expense limitation rules in IRC §163(j) would conflict with existing state addback rules. If states conform to IRC §163(j), a possibility exists of duplicate limitation on interest deductibility, resulting in double taxation of the affected state taxpayers. Decoupling from IRC §163(j) would minimize this uncertainty and unnecessary complexity.

- **Decoupling from IRC §163(j) would keep states competitive for international investment**: Consider how international companies grow and expand in the United States. They often borrow from a related party or bank to finance investment in the United States. Imposing tighter interest limitations at the state level, without offering a lower tax rate or providing accelerated depreciation and immediate expensing, would increase the cost of capital and impose a higher threshold to be profitable. This new hurdle could result in an investment being altered in a way that firms no longer see the return needed to justify the investment. They then could make that investment in another state.

For additional information on OFII or with questions about conformity, please contact Evan Hoffman, director of state government affairs, at ehoffman@ofii.org.

About OFII

OFII is the only organization in Washington focused exclusively on supporting the international business. OFII members are among the largest international companies with operations in the United States. While more than 60 percent of all international companies in the United States have fewer than 1,000 U.S. employees, OFII members each employ on average of more than 12,000 Americans. OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, which in turn increases American employment and U.S. economic growth.

2018 OFII Membership List

ABOUT OFII The Organization for International Investment is a not-for-profit business association in Washington, D.C., representing the U.S. operations of many of the world's leading international companies. OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, increase American employment and boost economic growth to ensure the United States remains the top location for global investment. For more information, please visit www.OFII.org.

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