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PUBLIC MEETING
HELD ON AUGUST 22, 2018

Transcribed by:
CLARA C. ROTRUCK
Court Reporter

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PUBLIC MEETING

MS. EAGLE: Okay, we will go ahead and get started. Good morning, my name is Chelsea Eagle, I will be the facilitator for today's meeting. Chelsea Eagle, I will be the facilitator for today's meeting.

My role as facilitator is to preside in a neutral fashion. I am joined by Mark Hamilton, the Department's General Counsel and Anthony Jackson who will serve as our technical assistant.

Today is August 22nd, 2018, and this is a public meeting scheduled under Subsection (1) of Section 120.525 Florida Statutes. This meeting is held pursuant to Section 3 of Chapter 2018-119, laws of Florida.

The purpose of this meeting is to allow interested parties to present comments on the impact of the Federal Tax Cuts and Jobs Act of 2017 on Florida corporate income tax and on Florida businesses. The Department has identified 13 topics from the Tax Cuts and Jobs Act with the potential to have a significant impact on Florida.

A list of these topics along with copies
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1 of the agenda and Section 3 of 2018-119 laws of
2 Florida are available at the front of the room.
3 For those at the computer, they are also posted
4 with today's agenda on the Department's website
5 at Florida Revenue.com slash CIT review.

6 We will take comments on each agenda item
7 from anyone present. For anyone present we ask
8 that you step up to the podium when you want to
9 speak on an agenda item. Please state your
10 name and whom you present.

11 I will now ask Anthony Jackson to explain
12 the process that we will use for taking
13 electronic comments on agenda items.

14 MR. JACKSON: Good morning, ladies and
15 gentlemen. If you are attending this meeting
16 using the option telephone with audio pin and
17 you have a question or comment, send an e-mail
18 to CIT Review at Florida Revenue.com to let me
19 know you wish to speak.

20 We will address you by name and I will
21 give you a phone when it is your turn to speak.
22 If you are using the option telephone with no
23 audio pin, you must e-mail your question or
24 comment directly to CIT Review at Florida
25 Revenue.com. Please use the subject line,

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1 August 22 meeting.

2 For the comments we ask that you add your
3 name and whom you represent and your e-mail.
4 We will read your comment out loud and the
5 court reporter will enter it into the record.
6 If you are attending this hearing using your
7 computer, raise your hand using the icon on the
8 grab tab left of your control panel and we will
9 address you when it is your turn to speak.

10 Please state your name and whom you
11 represent and the court reporter will enter it
12 into the record along with your question or
13 comment. If you per difficulty use the quick
14 check option to send me a message.

15 MS. EAGLE: All visitors need to wear a
16 public meeting badge while in the building.
17 Please return it when the meeting is finished.
18 If there is an emergency evacuation we will
19 walk together to the evacuation zone for your
20 safety.

21 Please mute or turn off any cell phone
22 ringers or other noise making devices. Thank
23 you.

24 Our first agenda item is an overview of
25 the Florida corporate income tax review project

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1 which was created in Chapter 2018-119 laws of
2 Florida. During the 2018 legislative session,
3 the Florida Legislature recognized that federal
4 tax law changes made by the Tax Cuts and Jobs
5 Act of 2017, public law 115-97 would have
6 significant affects on Florida corporate income
7 tax and taxpayers when it is fully implemented.

8 To better understand these affects the
9 Department of Revenue was directed to examine
10 how the Tax Cuts and Jobs Act of 2017 will
11 affect the state corporate income tax as a
12 result of the state's adoption of the 2018
13 Internal Revenue Code.

14 Chapter 2018-119 laws of Florida provides
15 guidance on how the examination is to be
16 conducted and requires a final report to be
17 submitted to the Governor, President of the
18 Senate, Speaker of the House of Representatives
19 and the Chairs of the appropriate legislative
20 committees by February 1, 2019.

21 The examination includes review of IRS
22 guidance, external analyses and the gathering
23 of public comments through a public input
24 process and public meetings, like the one being
25 held today. The chapter law also required the

1 Department to provide a status report on
2 August 3rd, 2018, and requires the Department
3 to provide another status report on
4 November 16th, 2018, to the Chairs of the
5 appropriate legislative committees. The first
6 status report is available on the Department's
7 CIT Review web page.

8 Our second agenda item is to accept public
9 comments on each of the 13 current topics under
10 review. The topics are listed in the order
11 they appear in the Department's August 3rd,
12 2018 status report.

13 I will give a brief explanation of each
14 topic and then open the floor for public
15 comment. When you come forward to give
16 comments, we ask that you begin by stating your
17 name and whom you represent. At the request of
18 a participant we will take two items out of
19 order and receive comments on it them now.

20 The first item we will receive comments on
21 is number 10 on your list of current topics
22 under review by the Department. The 10th topic
23 under review is global intangible low tax
24 income.

25 The Tax Cuts and Jobs Act of 2017 creates

1 Internal Revenue Code Section 951(a) which
2 imposes a tax on the global intangible low tax
3 income of certain U.S. taxpayers and their
4 affiliates for tax years beginning on or after
5 January 1, 2018.

6 Global intangible low tax income is
7 included in a company's gross income and
8 generally treated in a manner similar to
9 subject part (f) income with certain deductions
10 and exemptions.

11 Are there any public comments on this
12 topic? Are there any comments from electronic
13 participants?

14 MR. JACKSON: Mr. Freedman.

15 MR. FREEDMAN: Thank you, can you hear me
16 okay?

17 MS. EAGLE: Yes.

18 MR. FREEDMAN: Okay, great, thanks. This
19 is Carl Freedman, I am the vice-president,
20 general counsel for the Council on State
21 Taxation, and I appreciate very much the
22 opportunity to talk about the global intangible
23 provision, the so-called GILTI provision.

24 And if it is okay with you if I could also
25 talk about the interest limitation provision at

1 the same time. Is that okay, just because I
2 have to make a flight this morning. Is that
3 okay?

4 MR. HAMILTON: Actually, that will be the
5 next topic. We will go right into that, but we
6 want to make sure we get everyone's comments on
7 this first topic.

8 MR. FREEDMAN: Okay, so I will just hold
9 my comments for now to the GILTI provision.

10 MR. HAMILTON: Thank you.

11 MR. FREEDMAN: So just a quick background
12 for those of you unfamiliar, COST is a
13 non-profit trade association based in
14 Washington, D. C. and we have got a membership
15 of about 550 major multi, national multi state
16 businesses. And a significant number of our
17 members do business in Florida and have
18 substantial property, employees and sales in
19 Florida. So we are very interested in, you
20 know, in the conformity or decoupling that
21 Florida is going to end up with in terms of the
22 federal tax reform, the Tax Cuts and Jobs Act.

23 And so I wanted to focus on two items
24 today. So I will focus on the first one. You
25 know, just as a general statement, you know,

1 certainly in conformity with federal income tax
2 laws is quite expensive and, you know, as a
3 general principle it can be very helpful, it
4 can ease compliance by having more uniformity
5 between federal and state rules. And so
6 Florida like the 46 or 47 other states that
7 have corporate income taxes extensively relies,
8 you know, for many of its roles federal income
9 tax.

10 But the issue with something as
11 complicated and sweeping as federal tax reform
12 that was passed by Congress in December of
13 2017, is that it is not really full conformity
14 the way that, you know, the fact that Florida
15 at this point, and I know Florida is
16 considering what it should do because it is
17 such a complicated statute, but by linking to
18 the 2018 Florida Code as it exist, Florida like
19 many other states picks up some, but not all of
20 the changes that occur.

21 And as a general principle the states
22 generally pick up the base broadners, the
23 revenue risers from federal tax reform, but
24 don't pick up the tax credits, and that can
25 have an extremely different result at the state

1 level than it does at the federal level.

2 So that is what I want to highlight in
3 terms of focusing on the GILTI provision which
4 is one of the most important international tax
5 provisions in the Act. I want to highlight how
6 different the outcome would be if Florida
7 conforms to that, that it would be at the
8 federal level from both a policy perspective
9 and an operational perspective and why, you
10 know, from COST's opinion, the opinion of our
11 members, we think Florida should decouple from
12 that provision because it is bad tax policy.

13 And you know, part of this is, as I said,
14 full conformity is one thing, but when you only
15 have partial conformity which is just sort of
16 based on how mechanically the state ties to the
17 Federal Code, that can be -- lead to
18 inadvertent and arbitrary results and it would
19 certainty make it so in the case of GILTI.

20 So we are focusing then in on GILTI.
21 GILTI is one of the major provisions as part of
22 the federal revamping of how it taxes foreign
23 source income. So the federal government is
24 actually narrowing the way it taxes foreign
25 source income, income earned by U.S. multi

1 nationals and other U.S. taxpayers outside the
2 U.S.

3 It is moving from the system where it
4 would tax all of that income, albeit a lot of
5 it on a deferred basis where income is dividend
6 back to the U.S., to not taxing all of it and
7 moving to sort of a quasi territorial system,
8 but taxing just sort of discreet categories of
9 it, and certainly the so-called global and
10 intangible low tax income that we are referring
11 to is GILTI or G-I-L-T-I.

12 The shorthand for it is one of these new
13 categories of foreign source income. So I
14 think the starting proposition here for it is
15 the federal government is actually in the Tax
16 Reform Act, narrowing significantly the way it
17 taxes foreign source income, not taxing all of
18 it as it did in the past, but just taxing 13
19 modest categories of it.

20 If a state like Florida were to adopt the
21 conformed, it would be vastly expanding the way
22 it taxes foreign source income, because most
23 states similar to Florida don't typically tax
24 foreign source incomes, tax only sort of which
25 is in the water's edge or within Florida

1 abroad.

2 So as a starting principle the outcome
3 here would be very different for say if Florida
4 adopts GILTI than the outcome at the federal
5 level.

6 The second big difference is that
7 federally the provision of like GILTI is
8 intended in large part to raise revenues to
9 offset major tax cuts. So I did submit some
10 testimony, but just the highlights of it.

11 The federal government is raising about
12 \$324 billion over a 10-year period from the
13 international tax provisions, GILTI being one
14 of the main ones, and this is helping to offset
15 \$654 billion over 10 years of other business
16 tax cuts. So overall, this tax package is
17 about a 10 percent tax cut for corporations at
18 the federal level.

19 At the state level as we indicated in the
20 study that COST had done with Ernst & Young, if
21 the states like Florida conform to the
22 provisions that are currently in your statute,
23 this would be about a 13 percent tax increase
24 for corporations instead of the 10 percent tax
25 cut that is happening federally.

1 So again, the outcome, and it is just sort
2 of arbitrary just because of the fact that you
3 don't pick up the tax cuts and you pick up the
4 base broadners, such as GILTI. The outcome
5 would be very different in terms of the goals
6 of federal tax reform, which was to increase
7 competitiveness of U.S. companies from a tax
8 perspective internationally and spur growth.
9 And it is quite a different outcome if you end
10 up with a large tax increase instead of a tax
11 cut overall.

12 And third, and then perhaps even the most
13 important is that GILTI as a provision is quite
14 complicated. But there was a goal, there were
15 two goals really federally. One was to raise
16 money to offset tax cuts so that several states
17 don't have a similar need to off cut the tax
18 cuts because you are not giving them.

19 But the other thing was to try to tax not
20 all foreign source income at the federal level,
21 but only foreign source income that was taxed
22 at a lower rate than 13.125 percent. So this
23 is the so-called lower tax part of the bill.

24 And there is sort of a complicated formula
25 that gets to that, but basically your foreign

1 source income of a U.S. company is taxed above
2 13 percent. The federal government is
3 typically not taxing on the going forward
4 basis. If it is taxed below that, they're
5 going to try to pick up the increment with this
6 GILTI provision.

7 And the problem from the state level is
8 that Florida, and Florida is not alone in this,
9 all the states that are considering conforming
10 to GILTI don't provide one of the key
11 provisions that limits the taxation of foreign
12 source income that has already been taxed at a
13 higher level, the 13.125 percent, and that is
14 foreign tax credits.

15 The way the federal government gets there
16 is they allow 80 percent of the foreign tax
17 credits paid on this income to be credited
18 against the income that forms the GILTI bucket
19 before the federal government taxes it. Since
20 the state does not conform to foreign tax
21 credits states have always used apportionment
22 instead of tax credits.

23 Florida if they remain or if they conform
24 to GILTI would end up taxing all of the foreign
25 source income subject to a few carve outs,

1 whether it was in high tax countries or low tax
2 countries, and this clearly was not the intent
3 federally. This would be an unprecedented
4 expansion of the state corporate income tax
5 base if Florida was to do it.

6 So for these reasons already 11 states
7 have decoupled from GILTI and more likely to
8 follow, and among the states that have
9 decoupled from it are some of the sort of
10 competitor states in the southeast with
11 Florida, Georgia has decoupled, North Carolina
12 has decoupled, South Carolina has decoupled and
13 we think many of the states are looking at this
14 and saying, you know, maybe the federal
15 government should do it. That is not our call,
16 but certainly states shouldn't do this because
17 the outcomes are so different at the state
18 level.

19 So we would certainly in conclusion COST
20 would support either legislation or regulatory
21 guidance. It would decouple Florida completely
22 from GILTI and fall with the precedence of a
23 lot of these other states.

24 And you know, I would stress that it is
25 possible to do this. Maybe you could clarify

1 this legislatively because the problem starts
2 with the fact that that just the way Florida
3 accepts the Federal Code you very possibly pick
4 up 951(a) which is the provision that GILTI is
5 in.

6 So you might have to legislatively
7 decouple from it, but several states already,
8 in particular, Kentucky and Connecticut have
9 just done that through regulation just because
10 GILTI is similar to subpart (f) and we didn't
11 tax subpart (f). before. We are going to not
12 interpret our statute as tax GILTI going
13 forward. So it could be done either I think
14 through legislation or regulation.

15 The final point I want to make on GILTI
16 and this is different from the point I will
17 make on the interest provision, but even if
18 foreign were to not agree with our position
19 that this is bad tax policy and tax policy that
20 is inconsistent with the goals of federal tax
21 reform and inconsistent with the way that
22 Florida's tax foreign source income in the
23 past, even if one disagrees with that position,
24 there is also a constitutional impediment here,
25 and that is that if you for the first time tax

1 GILTI income and you are a separate reporting
2 state like Florida, and obviously, I have got
3 almost half the states are still separate
4 reporting states in this country, then you
5 would be taxing the income of foreign
6 subsidiaries, but not similar income of non
7 nexus, domestic subsidiaries of the company
8 that is filing in Florida.

9 And really the Craft case from 1992 is
10 directly on point. You can't do that, that
11 would be a violation of the commerce clause by
12 treating foreign commerce worse than you are
13 treating domestic commerce. And even though
14 the Craft case dealt with foreign dividends,
15 the principle is the same.

16 If you are taxing the income of a foreign
17 subsidiary of a Florida taxpayer and you are
18 not taxing a similar income of a domestic owned
19 subsidiary that doesn't have to file in Florida
20 and do the separate reporting system, that
21 violates the commerce clause.

22 So that is my final point on this, is
23 that, you know, my earlier points were this is
24 just bad public policy and I think that is why
25 at the state level, you know, 11 states have

1 already decoupled from it, but even if you were
2 to think that this is good tax policy for
3 Florida, you are not going to be able to keep
4 this money, because there is going to be
5 litigation and the Craft case is very clear
6 that certainly for a separate reporting state
7 you can't tax GILTI income because of the U.S.
8 constitution's commerce laws.

9 So I will reserve my comments for the
10 interest expense limitations for your next
11 section and I really appreciate the opportunity
12 to speak and I would be certainly glad to
13 answer any questions either right now or, you
14 know, in the near future.

15 MS. EAGLE: Thank you. Are there any
16 additional public comments on this topic?

17 MR. JACKSON: Go ahead, Ms. Smith.

18 MS. SMITH: Hello, this is Diane Smith at
19 (inaudible). I represent what is called the
20 State Tax After Reform Partnership, the STARP
21 Partnership.

22 We represent a collision of 24 of the
23 largest companies in the world on the issue of
24 conformity with federal tax reform.

25 Specifically on GILTI, we echo all of the

1 points that COST, that Carl at COST has made.
2 Specifically we note that Florida has a history
3 of not taxing foreign incomes. Florida has
4 historically had a deduction for subpart (f)
5 income.

6 As Carl noted, we think that it is not
7 necessarily required to have legislation to
8 exclude GILTI from the tax base at this point
9 because it is still to subpart (f) income.

10 Important to note that the Tax Cuts and
11 Jobs Act commerce report specifically noted
12 that GILTI is generally treated similarly to
13 subpart (f) inclusion. So even the federal
14 government recognized that it was in many ways
15 identical to subpart (f). For those reasons we
16 think that Florida can administratively exclude
17 GILTI from the tax base.

18 We also echo Carl's notes about the --
19 that it is an extraordinarily complicated
20 calculation to be made, and as a result of
21 that, the constitutional problems are also
22 exacerbated.

23 I will get to the Craft point in a moment,
24 but to the extent that Florida decides to
25 include GILTI in the tax base, there would have

1 to be some type of constitutional apportionment
2 for that GILTI. Trying to decide when you are
3 looking at foreign entities that are not
4 included on an entity by entity basis, but
5 instead have this complicated netting before
6 GILTI is calculated and then include it in a
7 domestic tax base, Florida would have to decide
8 what portion of each of those entities should
9 be included in the denominator.

10 And then because they are netted before
11 they are included in the tax base there would
12 have to be additional adjustments that would
13 need to be made to the denominator. We think
14 that this is just too complicated for the
15 amounts that would be weighed by Florida in
16 this case.

17 Finally as COST noted, Florida would be
18 engaged in probably years of litigation should
19 GILTI be included in the tax base, because of
20 the Craft case. Carl noted that this is a U.S.
21 Supreme Court case that said that a state
22 cannot treat foreign income differently than
23 domestic income.

24 And in fact, the U.S. Supreme Court has
25 been even harsher in looking at states that

1 discriminate against foreign income as opposed
2 to states that discriminate against purely
3 domestic income from other states.

4 We just don't see any way that a state can
5 include GILTI income and be consistent with the
6 commerce clause of the U.S. Constitution. And
7 thank you, I will have comments on other
8 provisions as well.

9 MS. EAGLE: Thank you. Are there any
10 additional comments from the public on this
11 topic?

12 MR. HAMILTON: I want to take this
13 opportunity to thank Mr. Freedman on behalf of
14 the Council of State Taxation, and also note
15 that we received written comments from
16 Mr. Freedman dated August 20th. Those can be
17 found on the Department's CIT Review website.
18 It is Florida Revenue.com forward slash CIT
19 Review.

20 Additionally, thank you, Ms. Smith, for
21 your comments this morning as well. I just
22 want to acknowledge that we also received
23 written comments from Ms. Smith. I believe we
24 received those late last night, early this
25 morning. Those will be posted in short order

1 so that you can check online for those. Thank
2 you.

3 MS. EAGLE: Okay, the next topic the
4 Department will review comments on at this time
5 is item 12 on your list of current topics under
6 review by the Department.

7 The 12th topic under review is the net
8 interest deduction. The deduction for interest
9 expenses is limited to 30 percent of adjusted
10 taxable income plus business interest income
11 with special elections available for real
12 property trades and businesses.

13 For the first four years after the
14 enactment of the Tax Cuts and Jobs Act of 2017,
15 adjusted taxable income is computed without
16 subtracting depreciation, amortization or
17 depletion in addition to interest and taxes.

18 Beginning in 2022, adjusted taxable income
19 would be decreased by depreciation,
20 amortization or depletion, thus making the
21 computation 30 percent of net interest expense
22 exceeding earnings before interest and taxes.

23 Are there any public comments on this
24 topic? Are there any comments from electronic
25 participants?

1 MR. FREEDMAN: Hi, this is Carl Freedman.
2 Can you hear me now?

3 MS. EAGLE: Yes, we can hear you.

4 MR. FREEDMAN: Thank you again, this is
5 Carl Freedman, vice-president, General Counsel
6 with the Council on State Taxation.

7 Appreciate again you taking this one out
8 of order. And you know, this is again an
9 extremely important provision for businesses,
10 and you know, where COST, since our membership
11 is larger companies, I am not focusing my
12 comments on some of the other provisions which
13 are very important you have under
14 consideration, but really for larger businesses
15 operating in Florida, the two most important
16 provisions are the GILTI one that we just spoke
17 about and the interest one.

18 And what I would like to highlight here,
19 and I did submit this as part of the testimony,
20 but just to give some highlights of why again
21 we think this is a provision that Florida, and
22 for that matter, other states should decouple
23 from, and I think this one unlike GILTI where
24 both myself and Diane had mentioned before, I
25 think that Florida could do something

1 regulatory to say the GILTI income is not part
2 of the Florida Tax Code after linking with the
3 Federal Income Tax Code as of 2018, it is not
4 part of the State Tax Code.

5 This would require decoupling from 163(j)
6 which is the federal provision and probably has
7 to be done legislatively. But the reasons for
8 why we think decoupling is right public policy
9 as opposed to conformity with the new
10 provisions in 163(j), are really similar to the
11 GILTI one.

12 And that is whenever you think of the
13 federal tax policy and it was, you know, a big,
14 big tax reform that had a lot of different
15 pieces that were interconnected. The outcome
16 at the state level of connecting to this
17 interest expense limitation is completely
18 different than the federal outcome, both from
19 the overall police level and from the
20 operational level.

21 So let me just sort of explain that, you
22 know, in sort of a high level, but I would be
23 glad to answer any questions. The first part
24 of it is, you know, 163(j) is a significant
25 base broadner, and in Florida as federally it

1 would lead to about a seven percent on average
2 tax increase per year over the first 10 years
3 of implementation. So that is all the
4 provisions that would affect Florida, you know,
5 in terms of linking on the corporate side.

6 Again, I am talking just about the
7 corporate income tax with the federal tax
8 reform. This would be the largest tax increase
9 on businesses in Florida. Certainly when the
10 states, you know, as they are considering these
11 things and it is exactly why you are having
12 this hearing here, it is not as if the state,
13 you know, legislators met or the Governor or
14 the Department of Revenue met on January 1st,
15 2018 and said, this is a great way for us to
16 raise taxes on our businesses, we think they
17 should be higher.

18 I mean, this is again just sort of
19 inadvertent based on the mechanical conformity
20 with the code and with, you know, Section
21 163(j). So again, as an outcome federally this
22 is completely different because federally
23 163(j) is just a package of base broadeners that
24 are actually used to offset large tax cuts and
25 end up with an overall net tax cut for

1 corporations at the federal level of 10 percent
2 as I indicated, whereas since the states like
3 Florida don't pick up the tax cuts this would
4 lead to, this would be seven percent, the
5 largest element of a potential 13 percent
6 corporate tax increase per year over the first
7 10 years in Florida if Florida were to conform
8 with it.

9 So that is the first part of this that I
10 think is inconsistent from the state
11 perspective compared to a federal perspective,
12 and this is why this is bad tax policy from a
13 state perspective.

14 The second inconsistency is that it
15 clearly this provision, the interest expense
16 limitation basically saying, you know, if you
17 borrow a lot you are going to be limited to
18 roughly 30 percent of that interest, 30 percent
19 of your income can be offset by that interest
20 and the rest you're going to have to carry
21 over. So this was just a way of not denying
22 the interest deduction, but just speeding it
23 out over time.

24 But it was coupled with another provision
25 federally, and that was allowing not just the

1 50 percent bonus depreciation, but 100 percent
2 expensing over a five-year period for most of
3 your capital investments, and that provision
4 was clearly to encourage, you know, growth,
5 economic growth through making it easier for
6 companies to immediately deduct all of their
7 costs of their capital investment as opposed to
8 depreciating that over a series of years.

9 And the reason these two provisions were
10 together federally was the federal government,
11 Congress was saying, look, if we are going to
12 encourage you to invest to make capital
13 improvements, then we are going to allow you to
14 deduct your expense loads immediately, we don't
15 want you borrowing money to pay for those
16 investments and then deducting all of that
17 income right away, because that sort of would
18 be couple dipping in their opinion.

19 Anyway, a lot of the times I think those
20 two provisions together make a lot of sense.
21 The reason I am belaboring this point is that
22 Florida like most states have already decoupled
23 from the provision 168(K) of the Internal
24 Revenue Code that allowed for the accelerated
25 50 percent bonus depreciation as opposed to

1 spreading depreciation over a larger number of
2 years. Half of it could be expensed right
3 away.

4 This new provision is in that same
5 provision and Florida by linking the way it
6 does to the code wouldn't pick up the 100
7 percent expensing. So to pick up the tax
8 increase, the base broader which is the
9 interest limitation without also allowing for
10 the 100 percent expensing is the second element
11 that is completely inconsistent with both the
12 federal and how the federal provision operates
13 in affect. So that is the second reason why I
14 think Florida should decouple from 163(j).

15 And then the final reason is just more of
16 a complexity reason. That the way that 163(j)
17 works is it is intended to be implemented on a
18 consolidated basis. You take all of your U.S.
19 companies enter into a consolidated group, and
20 the intent is really to limit your interest,
21 primarily your external interests which are
22 borrowing from banks, not your sort of internal
23 loans between companies and stuff, because
24 those are at least within the federal
25 consolidated group, those are eliminated.

1 When you, and this is no fault of
2 Florida's of course, but when you implement or
3 try to implement the same provision in a
4 separate reporting state where you may have,
5 likely to have far fewer entities that are part
6 of the federal consolidated group actually
7 doing business and filing in Florida, you can
8 just get some very bizarre complicated results,
9 and it just depends on who is filing as part of
10 the federal consolidated group in Florida, what
11 they are borrowing is. Do they borrow from
12 affiliated members? The internal debt at all
13 that is limited here.

14 What the income is for Florida and so
15 forth. So the impose of 30 percent limitation
16 on debt that is filed by Florida companies not
17 only could actually hurt those companies from
18 an economic growth and competitive perspective,
19 but can just lead to very complex and arbitrary
20 results that have nothing to do with what the
21 results are at the federal consolidated level.

22 So really in sum it is those three
23 reasons. And again, very similar to the reason
24 for GILTI that imposition of these provisions
25 just like they were for GILTI, conformity with

1 the interest expense on the (inaudible)
2 provisions in Section 163(j) leads to, one, a
3 completely different policy result because you
4 are not giving the tax cuts, you are just
5 giving the tax increases. Leads to a much
6 different second policy result because you are
7 not picking up, you are not picking up
8 100 percent expensing, but you are picking up
9 the debt limitation.

10 And then finally it is very, very
11 difficult to implement in a separate reporting
12 state, and needless to say, we have no federal
13 guidance yet on how they're going to implement
14 this, the kind of guidance that you would need
15 to provide.

16 So for all of those reasons there have
17 already been not as many GILTI, but a number of
18 states that have decoupled from this interest
19 provision. And I just want to highlight
20 several of them are your neighboring states
21 that you may be concerned about from sort of a
22 competitive perspective with other southeastern
23 states, mainly Georgia, Mississippi and
24 Tennessee have already decoupled from this
25 interest expense limitation.

1 So again, just to conclude, COST and its
2 members strongly encourage Florida to decouple
3 from both the GILTI provision and the interest
4 expense limitation provision, and not that the
5 we don't have opinions on some of the other
6 provisions, but we do think these are the two
7 most important provisions to businesses that
8 are creating jobs and making investments in
9 Florida, and we think you should follow this
10 suit for many other southeastern states that
11 have already decided to decouple from these
12 provisions.

13 So again I thank you for the time and
14 certainly would welcome any questions, either
15 at this time or in the near future.

16 MS. EAGLE: Thank you. Are there any
17 additional public comments?

18 MR. JACKSON: Go ahead, Ms. Smith.

19 MS. SMITH: Thank you. Again, this is
20 Diane Smith with McDermott on behalf of the
21 STARP Partnership. We echo what Carl had said
22 for COST regarding the decouple from the
23 interest expense limitation. We think it does
24 need to be done legislatively.

25 As Carl noted at the federal level this

1 was a revenue raiser that was intended to be
2 joined with the immediate expensing. As the
3 result of Florida, right now is only following
4 one of those three items. It doesn't have the
5 immediate expensing and it does not have the
6 reduced rates that the federal level has.

7 Carl also noted the complexity problems.
8 I would emphasize that a little bit further.
9 We don't know yet exactly how the federal
10 government is going to go about imposing this
11 interest limitation. We expect some guidance
12 from them.

13 They have suggested that this is going to
14 be calculated at the federal level on a
15 consolidated basis, seems to be the intents of
16 Congress that it is done that way. As a result
17 for states like Florida that don't follow
18 identically the federal consolidated rules, a
19 taxpayer would have to recalculate the interest
20 limitation at the state level.

21 The state would have to decide how that
22 recalculation is done. For example, are they
23 just going to use however the federal
24 government allocated the interest among the
25 consolidated group members? On the other hand,

1 are they going to ask a Florida taxpayer to
2 determine a proforma return as if they were not
3 calculating consolidated at the federal level?

4 And then once these determinations are
5 made you have additional issues, such as at the
6 federal level you are allowed to carry over
7 indefinitely unused interest expense in any
8 particular year. Well, how does that work at
9 the state level, particularly at the federal
10 level because the carry over can be used among
11 the consolidated group members.

12 So you might have very different carry
13 over rules at the state level and the federal
14 level. This type of complexity we think is
15 completely unnecessary because the interest
16 expense is not married with the lower rate and
17 the immediate expensing.

18 As a result of that we think that Florida
19 should have some type of legislative proposal
20 to decouple from the interest expense
21 limitation. Thank you.

22 MS. EAGLE: Thank you. Are there any
23 additional public comments on this topic? We
24 will now return to the order provided in the
25 list of current topics under review by the

1 Department.

2 The next topic under review is the
3 treatment of deferred foreign income upon
4 transition to a participation exemption system
5 of taxation.

6 The Tax Cuts and Jobs Act of 2017 amends
7 Internal Revenue Code, Section 965 to impose a
8 one time corporate income tax transition tax on
9 deferred, untaxed foreign income as if such
10 income had been repatriated to the United
11 States in the business' last tax year beginning
12 before January 1, 2018.

13 Are there any public comments on this
14 topic?

15 MR. HOLCOMB: Good morning, I am Mark
16 Holcomb with Dean, Meed & Dunbar in
17 Tallahassee. I appreciate the informal
18 guidance that the Department issued back in
19 March on repatriation.

20 I think the Department got the right
21 answer with the right analysis that
22 repatriation income is not included in the
23 Florida tax base. It was not a federal taxable
24 income, we don't pick it up from the starting
25 points.

1 I would urge the working group to consider
2 codifying position, because as we know the
3 informal guidance the Department issued is not
4 legal authority that taxpayers can necessarily
5 rely on.

6 And I think in the interest of certainty
7 for taxpayers, in the interest of certainty for
8 the Department in administering the tax code,
9 that that position ought to be codified either
10 in statute or by regulation.

11 I think it is important also that the
12 reasoning of that informal guidance be adopted.
13 And the reason was it is not in the tax base.
14 Not that it was going to be treated as subpart
15 (f) income, because if it was treated as
16 subpart (f) you excluded, you have the expense
17 add back problem and that would be a
18 significant tax increase on Florida taxpayers
19 if the Department were to take that route.

20 So in sum, I think the analysis and the
21 tip was correct and I think that is the
22 position the Department and the working group
23 ought to codify. Thank you.

24 MS. EAGLE: Thank you. Are there any
25 additional comments on this topic? Are there

1 any comments from electronic participants?

2 MR. FREEDMAN: Hi, this is Carl Freedman
3 again from Council on State Taxation. I would
4 like to take the opportunity to talk on this
5 provision as well.

6 We didn't actually in the COST letter
7 testimony we sent in comment on this, but I
8 would like to certainly agree with the prior
9 speaker, that I think the Department has this
10 right that Florida has never taxed foreign
11 dividends in the past.

12 And then part of that is for the same
13 reason that I don't think Florida can tax GILTI
14 which is it would be a violation of foreign
15 commerce clause to do so, to tax that type of
16 an income without taxing some things similar
17 from a domestic perspective.

18 But I think there is something more
19 important than that, and this is where I think
20 there is a nice linkage with the decoupling
21 from the GILTI provision. And that is, is that
22 Florida has addressed in the past or become
23 generally by eliminating taxation as most
24 states have to the water's edge and this is
25 what most, all states have done for the last,

1 you know, 30 years or something. It has
2 limited their taxation trying to accurately
3 reflect what is earned in Florida and not
4 trying to tax Florida based entities or Florida
5 taxpayers on what is earned and taxed abroad.

6 So I think in the case of repatriation and
7 this is where I point out sort of the arbitrary
8 nature of conformity with the federal code
9 which you are rightfully considering right now
10 is that this is (inaudible) in this case
11 taxing, you know, de-informed. So over the
12 last 30 years this is something that Florida
13 has never done.

14 So you don't link to that particular
15 provision that would pick this up, and there is
16 only a minority of states that actually do in
17 that provision. In the case of GILTI, just
18 because of the way you arguably might pick up
19 this new section, 951(a), and I say, arguably,
20 because I do think you can address GILTI and
21 decoupling in a regulation, but you pick up
22 possibly GILTI.

23 You don't pick up repatriation, but the
24 reason to decouple from both and I think
25 rightfully you have already interpreted that

1 you are not -- you are not picking up the
2 repatriation transition tax is because there is
3 no reason at this point to fundamentally change
4 the way that Florida is addressing foreign
5 source income and not subjecting Florida
6 taxpayers to the tax on their foreign source
7 income that is taxed, earned and taxed abroad
8 just because the federal government is changing
9 the way it is taxing foreign source income.

10 And as I indicated before, the federal
11 government is actually likely narrowing the way
12 they are taxing foreign source income, taxing
13 less of it, albeit more of it on a current
14 basis, but less of it overall. Again, no
15 reason for Florida to change the way it is
16 doing what it has done in the past.

17 So for you to continue to do what you have
18 done in the past really requires some sort of
19 guidance on GILTI and/or legislation to make it
20 clear that you are not conforming to that.

21 And in the case of I think the
22 repatriation, I agree with the last speaker
23 that it is reasonably clear I think that you
24 don't tax foreign dividends and wouldn't pick
25 up this provision. But it wouldn't hurt to

1 clarify that by statute so that no taxpayer is
2 confused about that on a going forward basis.

3 Again, I thank you for your time in
4 allowing us to testify.

5 MS. EAGLE: Thank you. Additional
6 comments on this topic?

7 MR. JACKSON: Go ahead, Ms. Smith.

8 MS. SMITH: Hi, once again, Diane with the
9 STARP Partnership. We echo both of the two
10 previous speakers regarding the repatriation.
11 We thank Florida for already issuing guidance
12 on this, but Florida was a leader in actually
13 thinking seriously about how their current code
14 should address the repatriation.

15 If Florida through their Legislature were
16 to change on a going forward basis and decide
17 to tax this 965 income, this would bring up
18 considerable retroactivity problems.

19 This was a one time tax, one time
20 inclusion in income that happened for most
21 taxpayers for the 2017 tax year. A few
22 taxpayers will be included in 2018. But if
23 Florida were through future legislative
24 decision to decide to tax it, it would be
25 retroactive to 2017, and even worse than that,

1 it would be retroactive essentially overruling
2 guidance the Department has already issued.

3 So that would bring up considerable due
4 process problems that could also create
5 substantial litigation. Much like the GILTI
6 that I talked about earlier, the other
7 constitutional problems are if repatriation
8 were going to be included in the tax base there
9 would have to be some type of apportionment
10 that recognized the foreign entities that
11 generated this income.

12 Unlike GILTI, which is on a year by year
13 analysis, repatriation adds additional
14 complexity to the apportionment question
15 because as Carl noted it is going back decades
16 trying to figure out exactly what is the
17 appropriate apportionment for income that goes
18 back decades.

19 I certainly have not come up with an easy
20 and accurate way to do that. And like GILTI,
21 repatriation suffers from the Craft problem in
22 that it would tax foreign income very
23 differently than domestic income.

24 For those reasons we support what Florida
25 has already done regarding the guidance it has

1 issued and think that is the appropriate
2 approach. It would be very nice if we also
3 sought legislation confirming that. Thank you.

4 MS. EAGLE: Thank you. Additional
5 comments on this topic?

6 The next topic under review is the repeal
7 of alternative minimum tax. The Tax Cuts and
8 Jobs Act of 2017 repeals the federal corporate
9 alternative minimum tax for taxable years
10 beginning after December 31st, 2017.

11 The Act also accelerates the use of
12 previously earned federal alternative minimum
13 tax credits by not only allowing these credits
14 to offset the regular federal corporate income
15 tax liability, but also by allowing the credit
16 to be refunded.

17 Are there any public comments on this
18 topic? Are there any comments from electronic
19 participants?

20 The next topic under review is increases
21 in the Section 179 expense amount.

22 Taxpayers may elect to immediately expense
23 certain business assets rather than
24 depreciating them overtime. The Tax Cuts and
25 Jobs Act of 2017 amends Internal Revenue Code

1 Section 179 to increase the deduction from
2 500,000 to \$1 million, and the deduction phase
3 out from \$2 million to \$2.5 million.

4 Are there any public comments on this
5 topic? Are there any comments from electronic
6 participants?

7 The next topic under review is changes to
8 the net operating loss deduction. The Tax Cuts
9 and Jobs Act of 2017 amends Internal Revenue
10 Code Section 172 to eliminate the two-year net
11 operating loss carry back for most taxpayers,
12 extend the carry forward period indefinitely
13 and limit the amount of net operating loss
14 deductions that may be claimed in each year to
15 80 percent of income.

16 Are there any public comments on this
17 topic? Any comments from electronic
18 participants?

19 The next topic under review is bonus
20 depreciation. The Tax Cuts and Jobs Act of
21 2017 extends and modifies the additional first
22 year bonus depreciation deduction through 2026
23 for most property acquired and placed in
24 service after September 27th, 2017.

25 The 50 percent allowance is increased to

1 100 percent of property, for property placed in
2 service before January 1, 2023. After
3 December 31st, 2022, the 100 percent allowance
4 is reduced by 20 percent per calendar year, and
5 eliminated in 2027.

6 Are there any public comments on this
7 topic? Are there any comments from electronic
8 participants?

9 The next topic under review is the repeal
10 of the deduction for domestic production
11 activities.

12 Internal Revenue Code Section 199 provided
13 a reduced tax rate for income from certain
14 domestic production activities. The Tax Cuts
15 and Jobs Act of 2017 repeals the domestic
16 production activities deduction for taxable
17 years beginning after December 31st, 2017.

18 Are there any public comments on this
19 topic? Comments from electronic participants?

20 The next topic under review is base
21 erosion anti abuse tax.

22 The Tax Cuts and Jobs Act of 2017 creates
23 a new base erosion and anti abuse tax in
24 Internal Revenue Code Section 55(a) which is a
25 new minimum tax on large corporations with

1 significant base erosion payments to related
2 foreign parties. The base erosion and anti
3 abuse tax is in addition to the regular federal
4 income tax and is calculated on payments made
5 to related parties.

6 Are there any public comments on this
7 topic? Comments from electronic participants?

8 The next topic under review is
9 amortization of research and experimental
10 expenditures.

11 The Tax Cuts and Jobs Act of 2017
12 eliminates the current deduction for Internal
13 Revenue Code Section 174 expenditures and
14 requires all domestic research expenditures to
15 be amortized over a minimum of five years, and
16 for all foreign research expenditures to be
17 amortized over a minimum of 15 years. The
18 research and development credit is not affected
19 by the Act.

20 Are there any public comments on this
21 topic? Any comments from electronic
22 participants?

23 The next topic under review is the
24 deduction for dividends received from foreign
25 corporations. The Tax Cuts and Jobs Act of

1 2017 provides an Internal Revenue Code Section
2 245(a) that a U.S. corporation that is a
3 10 percent or more owner of certain foreign
4 corporations may claim a 100 percent dividends
5 received deduction for the foreign source
6 portion of dividends received from that foreign
7 corporation.

8 The foreign dividends received deduction
9 is limited to domestic corporations, not real
10 estate investment trusts or regulated
11 investment companies, and may not be included
12 in the computation of the foreign tax credits.

13 Are there any public comments on this
14 topic? Are there any comments from electronic
15 participants?

16 The next topic under review was global
17 intangible low tax income, which we addressed
18 earlier.

19 The next topic under review is the
20 deduction for foreign derived intangible
21 income.

22 The Tax Cuts and Jobs Act of 2017 creates
23 a new provision in Internal Revenue Code
24 Section 250 that gives domestic corporations
25 reduced rates of U.S. tax on their foreign

1 derived intangible income.

2 It provides a lower effective tax rate on
3 high returns related to foreign sales. The
4 calculation is similar to global intangible low
5 tax income, and not returns in excess of
6 10 percent of fixed assets form the basis of
7 the calculation.

8 This is achieved by providing domestic
9 corporations a deduction against foreign
10 derived intangible income subject to certain
11 limitations of 37.5 percent initially, reduced
12 to 21.875 percent for tax years beginning after
13 2025.

14 At a 21 percent corporate tax rate the
15 deduction results in effective rates of
16 13.125 percent and 16.40625 percent
17 respectively.

18 Internal Revenue Code Section 250 also
19 provides a subtraction for 50 percent of global
20 intangible low tax income and for 50 percent of
21 Internal Revenue Code Section 78 dividends.

22 Are there any public comments on this
23 topic? Are there any comments from electronic
24 participants?

25 The next topic under review was the net

1 interest deduction which we addressed earlier.

2 And the final topic under review is
3 changes to the treatment of capital
4 contributions.

5 The Tax Cuts and Jobs Act of 2017 amend
6 Internal Revenue Code Section 118 to provide
7 that certain federal, state and local
8 incentives used to attract companies are
9 treated as current taxable income to those
10 businesses rather than deferred capital
11 contributions.

12 Are there any public comments on this
13 topic? Are there any comments from electronic
14 participants?

15 MR. JACKSON: Go ahead, Ms. Smith.

16 MS. SMITH: Thank you. Once again, this
17 is Diane submit with STARP Partnership. For
18 the capital contributions as noted with some of
19 the other items that increased the tax base,
20 this was one of the trade offs at the federal
21 level for revenue raisers to offset the rate
22 cut.

23 As a result this doesn't happen at the
24 Florida level. We think it would be
25 inappropriate for Florida to continue to

1 conform with the federal increase in the tax
2 base.

3 There is also some inconsistency in states
4 taxing these capital contributions, while at
5 the same time providing capital contribution
6 incentives for companies to expand or to locate
7 within the state.

8 So on the one hand you would have Florida
9 saying, please come to our state to a business,
10 we will give you these incentives, but once we
11 give you these incentives we are also going to
12 tax them.

13 That is an inconsistency that could make
14 Florida less competitive than the other states
15 that choose not to conform. For these reasons
16 we think that Florida should decouple from this
17 federal provision. Thank you.

18 MS. EAGLE: Thank you. Are there any
19 additional comments on this topic? Are there
20 any public comments on topics not presented by
21 the Department? Are there any comments from
22 electronic participants?

23 MR. JACKSON: Go ahead, Ms. Smith.

24 MS. SMITH: Thank you. There is one last
25 item that we think the Department should

1 consider, is that the federal government also
2 started taxing FDIC premiums for finance
3 institutions.

4 It is clear that at the federal level this
5 was purely a revenue raiser. There was no
6 policy reason for starting to include these
7 premiums in the tax base. As a result we think
8 that Florida should look at this provision as
9 well and consider decoupling from the federal
10 rule. Thank you.

11 MS. EAGLE: Thank you. Are there any
12 additional comments?

13 On behalf of the Department I want to
14 thank everyone for participating and sharing
15 your comments with us. Your participation is
16 very helpful during this process.

17 The Department will hold another public
18 hearing to receive input on this project later
19 this year. Information about the second
20 meeting as well as the transcript from today's
21 meeting will be posted on the Department's
22 website at Florida Revenue.com slash CIT
23 Review.

24 Any additional comments you may have after
25 this meeting may be submitted to CIT Review at

1 Florida Revenue.com. All public comments are
2 posted to the Department's website.

3 This concludes the meeting. Thank you.

4 (Whereupon, the meeting was adjourned.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 02 through 50 represent a true, correct, and complete transcript of the tape-recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 12th day of September, 2018.

CLARA C. ROTRUCK
Notary Public
State of Florida at Large
Commission Expires:
November 13, 2018
Commission NO.: FF 174037