



MTC Litigation Committee Meeting

Salt Lake City, Utah and Virtual – July 22, 2025

**MTC Litigation
Committee Meeting
Salt Lake City, UT
July 22, 2025**

*STARTING TIMES ARE APPROXIMATE
AND LISTED IN MOUNTAIN TIME*

- I. Introduction and opening remarks—Ray Langenberg, Chair
- II. Approval of July 29, 2024 minutes
- III. Initial public comment period
- IV. Election of Vice Chair
- V. Annual review of the Litigation Committee charter
- VI. Presentation by Chad Gwilliam, Associate Athletic Director for Compliance at Brigham Young University
- VII. Discussion to solicit Litigation Committee member program ideas, to include attorney training sessions and the structure of roundtable/informational sharing sessions
- VIII. New or other business (including a federal tax update by David Merrien and Bruce Fort)
- IX. Adjourn




Playing With House Money


**Multistate Tax Commission– Salt Lake City, Utah & Virtual
July 22, 2025**

Chad Gwilliam
Associate Athletic Director
Brigham Young University






**July 1, 2021
(NCAA Interim NIL Policy)
and
June 6, 2025 (Class Action
Settlement)**








 **Bjork Announced that OSU NIL has Spent \$20 mil**



ST. LOUIS POST-DISPATCH
Mizzou spent more than \$31 million on NIL for athletes in the last year, records show



\$40 MILLION
Indiana coach names football programs spending that much in NIL on rosters



USA Today ON3

\$28M

3 Main Parts of House Settlement




**\$2.8 BILLION TO FORMER
STUDENT-ATHLETES**




**REVENUE SHARING FOR
CURRENT AND FUTURE
STUDENT-ATHLETES**



**CHANGES TO ROSTER
STRUCTURE**



**Name, Image, and Likeness
OR
Revenue Share?**



NIL and Rev Share Questions



WHO?



HOW MUCH?



WHAT FOR?



HOW?



Tax Implications?





Questions?



MULTISTATE TAX COMMISSION

**LITIGATION
COMMITTEE
FEDERAL TAX
UPDATE**

JULY 22, 2025

FEDERAL INCOME TAX UPDATE

GENERAL PROVISIONS IN PL 119-21

- Federal Tax Credits
- “Above The Line”
- “Below The Line”

Note that the update is limited to income tax changes having more than \$1 billion effect on the federal budget in any of the next ten years according to JCX-35-25 of the Joint Committee on taxation. It excludes most federal credit changes that are not likely to impact state budgets.

- Miscellaneous Provisions

IRA CREDITS PHASE-OUT

- PL 119-21 includes an array of changes to federal credits passed in the Inflation Reduction Act.
 - Phase-out or termination of most green energy credits.
 - New limitations restricting the credit to domestic entities or facilities built without the assistance of foreign prohibited entities.
 - Example: Clean Electricity Production Credit in Section Y45 will not apply with respect to any facilities put in service after 12/31/2027, and excludes facilities built after 12/31/2025 that includes material assistance from prohibited foreign entities (that includes Chinese entities).
 - Increase some credits (e.g. clean fuel production).

IRA CREDITS PHASE-OUT

- Potential impact
 - Net effect is a large reduction in federal credits for energy production.
 - Due to the scope of the decrease in tax credits, some projects may be abandoned. That may result in the generation of important net losses.

FAMILY AND WORKERS TAX CREDITS

- PL 119-21 increases several family and workers tax credits.
 - Child tax credit, child and dependent care credit and adoption credit
 - Employer provided childcare credit or family leave credit
 - If your state provides a credit that is calculated in function of these federal credits, it will have an impact.

“ABOVE THE LINE” BUSINESS DEDUCTIONS ABOUT TIMING

- Starting in Tax Year 2025.
- Full expensing of certain business properties under IRC 168(k) made permanent with special rules for long production period properties (e.g. aircrafts and plants).
- Full expensing for some qualified production properties (factories) under subsection IRC 168(n), with some restrictions (e.g. buildings used for production and retail of food and beverage are excluded).
- Full expensing of domestic R&D expenditures in new section IRC 174A.
- Increased Section 179 expensing threshold to \$2.5 million (previously \$1 million) with a phase-out starting at \$4 million (previously \$2.5 million).

ABOVE THE LINE BUSINESS DEDUCTIONS

ABOUT TIMING

- Business Interest Deduction
 - Calculation of adjusted taxable income (ATI) is permanently calculated without regards to depreciation, amortization, and depletion deduction, subpart F income (IRC 951(a)), net CFC tested income (199A(a)), a portion of the dividend received deduction (IRC 245A(a)), and the deduction under IRC 250 (a)(1)(B).
 - Some definition changes (e.g. floor plan financing).
 - Calculation of the reduction before any interest that must be capitalized and then apply the limitation first on the interest that needs to be capitalized.
 - Net effect: increases the allowable business interest deduction.

ABOVE THE LINE BUSINESS DEDUCTIONS ABOUT TIMING

All these provisions only accelerate the timing of business deductions to reduce taxable income in the year of the expense.

As a result, business owners will be more likely to record losses in these years.

However, as time goes by many taxpayers will likely report more taxable income in succeeding years. Indeed, the JCT predicts a decrease of the tax effect of these timing provisions over 10 years.

OTHER ABOVE THE LINE CHANGES THAT INCREASE TAXABLE INCOME

- Starting in Tax Year 2025.
- Finalized regulations are no longer required to qualify disguised sales or disguised fees as transactions between a partnership and a partner not acting as a partner.
 - Section 707(a)(2) is amended to strike “Under regulations prescribed” and insert “Except as provided”.
 - Some allocations and distributions are in substance payments for property or services rather than allocations and distributions from a partnership to a partner.
- Excessive remuneration of employees of a controlled group limitation
 - New Subsection IRC 162(m)(7) extends the scope of employees for which remunerations over \$1 million are not deductible.

OTHER ABOVE THE LINE CHANGES THAT REDUCE TAXABLE INCOME

- Starting in Tax Year 2025 with some provisions in 2026
- Opportunity zones under IRC 1400Z-1 and 1400Z-2 are expanded.
 - New Basis adjustment on certain periods
 - New disclosure requirement
 - JCT believes it will have a significant impact forecasting a reduction in federal revenue of \$41 billion over 10 years. The effect is quite concentrated, so states should look at whether they are likely to be the locations of these expansions.
- Expansion of the small business stock gain exclusion. (Silicon Valley's preferred exclusion). The amendment introduces various past and future periods and thresholds. The per-issuer limitation is increased to \$15 million from \$10 million. The impact should be felt mainly starting in 2030.

GILTI becomes NCTI (Net CFC Tested Income)

IRC 951A has been substantially modified, effective for the 2026 tax year.

The new NCTI will no longer be limited to a tax on “intangible income” which GILTI described as everything above a 10% deemed profit on tangible foreign assets. With the IRC 250 deduction now set at 40%, and with a 90% allowance for the foreign tax credit, NCTI will apply an effective 12.6% tax rate to all CFC income foreign income.

New IRC 951B will expand the group of CFC’s subject to the NCTI tax to include some indirectly owned U.S. companies.

GILTI becomes NCTI (Net CFC Tested Income)

Issues for States:

State conformity to GILTI has varied widely among the states, as GILTI occupied a unique position in state treatment of foreign source income; it is arguably not a “dividend” but many states chose to apply their DRD provisions to it.

The new NCTI will function more like a “deemed dividend” than GILTI did. States conforming to IRC 951A and 951B will face more pressure to provide for factor representation or some other adjustment to reflect the federal policies embodied in the foreign tax credit.

Conforming states may face challenges based on the foreign commerce clause as embodied in the 1992 *Kraft General Foods v. Iowa* decision.

NCTI will now constitute an even higher percentage of the federal tax base than GILTI did for most multinational corporations (MNE’s). If states choose to exclude NCTI from the tax base, the effective state tax rate on MNE’s will likely be lower than the effective tax rate on domestic-only corporations.

States may wish to consider worldwide combined reporting calculations as a litmus test for establishing appropriate tax policy and rates affecting MNE’s.

States that currently reference “GILTI” in their tax codes will need to consider amendments to reference IRC 951A and new 951B.

FDII (Foreign-Derived Intangible Income) Becomes Foreign Derived Deduction Eligible Income (FDDEI)

Effective for the 2026 tax year, there will be substantial changes to the current FDII regime.

FDII (and now FDDEI) provides for a deduction for income derived from sales of goods and services to foreign countries.

Most significantly, the FDDEI deduction will no longer be limited to the amounts above a deemed 10% rate of return on tangible U.S. assets. This change will significantly increase the amount of income eligible for the deduction.

At the same time, the amount of the deduction under IRC 250 reducing the NCTI (formerly GILTI) will be lowered from 50% to 40%.

Why the Changes? Some economist argued that the calculation of GILTI and FDII based on the excess over a deemed rate of return on tangible assets had the perverse effect of encouraging offshoring of such assets to reduce GILTI and increase the FDII deduction.

Issues for the States:

IRC 250 (FDDEI) is a “special federal deduction” reported on line 29(b) of the federal form 1120. States that conform to line 28 likely did not allow the FDII deduction against domestic income.

Most Line 28 base income states did reduce the amount of GILTI subject to apportioned state tax by 50% or more.

States that use Line 30 of the federal form 1120 as their base income definition likely did allow the FDII deduction and will now conform to the FDDEI deduction.

The elimination of the floor for deemed return on qualified business assets in the new FDDEI means that many corporations will see a significant increase in their IRC 250 deduction amounts (although it cannot exceed the NCTI amounts).

States that currently conform to IRC 250 should closely evaluate whether continued conformity is appropriate. Effective tax rates on domestic and multinational corporations could be significantly affected.

OTHER ABOVE THE LINE DEDUCTIONS FOR INDIVIDUALS

- Starting in 2025:
- Exclusion for employer payment of student loans under IRC 127(c) is set permanently at \$5,250 adjusted for inflation.
- Moving expenses deduction extended to members of the intelligence community. IRC 217(g)
- Extension and modification of the excess business loss limitation under IRC 461(I).
 - Carryovers are still treated as NOL limited to 80% of taxable income.
 - The effect will mostly start in 2030 since the current limitation was supposed to sunset in 2029.
- “Trump accounts” exemption of
 - Employer contributions to up to \$2,500 per employee, with an inflation adjustment starting in 2027.
 - Earnings.

CHARITABLE CONTRIBUTIONS DEDUCTION

- Starting in Tax Year 2025.
- Charitable contributions deduction (a mixed-bag).
 - Changes that reduce taxable income
 - Reinstatement of charitable contributions for individuals who do not itemize, up to \$2,000 for joint filers.
 - Corporations may carry forward excess contributions for five years.
 - Changes that increase taxable income.
 - Floors under which the deduction is not allowed:
 - 0.5% of the contribution base (AGI + NOL deduction) for individuals.
 - 1% of taxable income for corporations.

CLASSIC BELOW THE LINE DEDUCTIONS FOR INDIVIDUALS

- Starting in Tax Year 2025
- Increase in the standard deduction:
 - from \$12k to \$15,750 for individuals (\$31,500 for joint)
 - from \$18k to \$23,625 for head of household
- Deduction for seniors (over 65)
 - \$6k reduced by 6% of AGI exceeding \$75k of AGI (\$150k for joint)
- Personal exemptions from pre-TCJA era permanently terminated.

BELOW THE LINE ITEMIZED DEDUCTIONS

- Starting in Tax Year 2025
- SALT limitation increases to \$40k
 - Then \$40,400 for 2026, increased to 101% of the previous year for 2027, 2028 and 2029, then drops to \$10k in 2030.
 - Phases out starting at \$500k of MAGI in 2025, \$505k of MAGI in 2026, 101% of the previous year in 2027, 2028 and 2029.
 - The phase out cannot reduce the deduction below \$10k.
- No limit on pass-through work-around.

BELOW THE LINE ITEMIZED DEDUCTIONS

- Starting in Tax Year 2026.
- New limit to tax benefit of itemized deductions. Itemized deductions are reduced by $\frac{2}{37}$ of the lesser of itemized deductions or taxable income exceeding the threshold of the 37% bracket without regards to the QBI deduction.
 - The JCT seems to forecast that this provision will push taxpayers towards the standard deduction.
- Termination of miscellaneous itemized deductions other than educator expenses

BELOW THE LINE DEDUCTIONS NOT SUBJECT TO THE ITEMIZED DEDUCTION LIMITATION

- Starting in Tax Year 2025.
- Qualified Business Income (QBI) Deduction
 - Permanently extends the deduction to 20% of QBI.
 - Increases the phase-in limitations by increasing the thresholds used for the calculation. (e.g. \$150k for a joint return instead of \$100k).
 - Adds a minimum deduction of \$400 for taxpayers having at least \$1,000 of qualifying income.
 - The revenue effect should increase over the years.
- Deduction of auto loan interest
 - Up to \$10k, with phase out when AGI reaches \$100k.
 - Indebtedness must be incurred after 12/31/2024.
 - The auto must be assembled in the US.

BELOW THE LINE DEDUCTIONS

NOT SUBJECT TO THE ITEMIZED DEDUCTION LIMITATION

- Starting in tax year 2025, ending in tax year 2028.
- Tip Income
 - Up to \$25k of qualified tips: cash tips received for services provided as an employee.
 - Cash tips includes tips paid in cash or charged plus any tip sharing arrangements (excludes other kinds of payments).
 - Phase-out starts at \$150k of MAGI (\$300k for joint).
- Overtime Pay
 - Up to \$12,500 (\$25k for joint) of qualified overtime compensation as required under section 7 of the Fair Labor Standard Act of 1938.
 - Phase-out starts at \$150k of MAGI (\$300k for joint).



MISCELLANEOUS

- Starting in 2025
- New reporting threshold for Forms 1099 is \$2,000
- Third party settlement organizations 1099-K's threshold is back to 200 transactions with an aggregate not exceeding \$20k.



QUESTIONS?

