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Conformity Update 2018: An Overview of 2018 Corporate Conformity Bills

At this point, most fixed-date states—those states that tie to the Internal Revenue Code as of a specific date—have acted in 2018 to update their conformity. The only fixed-date states that have not acted at all to update their conformity are Arkansas, California, New Hampshire and Texas. Certain of these states have somewhat unique conformity to the Code and California and Texas do not update each year.[1]

In other fixed-date states, conformity legislation was proposed, but never made it across the finish line. In South Carolina, lawmakers failed to enact conformity legislation during the regular session, but conformity is on the agenda for a special session. In Maine and Minnesota, conformity was included in larger tax bills that failed to pass or were vetoed during the regular sessions and there are no (current) plans to hold special sessions, plural. Lastly, at press time various bills containing conformity provisions have failed in Vermont.

And not to be outdone, several rolling conformity states—those states that tie to the Internal Revenue Code in effect for the year—also enacted legislation addressing various aspects of federal tax reform.

Because there are some complexities to the conformity bills enacted during Q2 and other legislation addressing tax reform, we have summarized the bills and any provisions in the bills that specifically address key federal corporate tax reform changes below in lieu of including details in the checklist. This article includes the conformity bills enacted in Q2, as well as the bills enacted in Q1 in order of enactment.

North Carolina Senate Bill 99 (enacted June 12, 2018): Senate Bill 99 updates North Carolina's definition of the Internal Revenue Code to capture the Code as of February 9, 2018. Senate Bill 99 requires an addback of amounts deducted under IRC sections 965(c) and 250, but provides deductions for amounts included in federal taxable income under IRC sections 951A or 965, net of related expenses. North Carolina has historically allowed a deduction for amounts included in federal taxable income under IRC sections 78 and 951, net of related expenses. Senate Bill 99 also requires an addback of the amount of gain that would be included for federal income tax purposes without regard to IRC section 1400Z-2(b), which is intended to decouple the state from the deferral of gains reinvested into an Opportunity Fund available under federal law. An addback is also required for the

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[1] The California Franchise Tax Board recently announced that it would hold an Interested Parties Meeting to discuss conformity, but not until November 15, 2018.

amount of gain that would be included in the taxpayer's federal taxable income but for the step-up in basis under IRC section 1400Z-2(c). The purpose of this change is to decouple North Carolina from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law. These provisions all became effective upon the date the Governor's veto was overridden, June 12, 2018.

Hawaii Senate Bill 2821 (signed June 7, 2018): Senate Bill 2821 provides that for all taxable years beginning after December 31, 2017, except as provided in Hawaii Rev. Stat. section 235-2.35, Internal Revenue Code means Subtitle A, Chapter 1 of the federal Internal Revenue Code of 1986, as amended as of February 9, 2018. The statute addressing the date of conformity (Hawaii Rev. Stat. section 235-2.3) also provides, as it has historically, that certain Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections are not operative for Hawaii purposes. This list of inoperative provisions is revised under Senate Bill 2821 to include: (A) Section 91, with respect to certain foreign branch losses; (B) Section 199A, with respect to the deduction for qualified business income; (C) Section 250, with respect to foreign-derived intangible income and global intangible low-taxed income; (D) Section 267A, with respect to certain related party amounts paid or accrued in hybrid transactions or with hybrid entities; and (E) Subchapter Z (sections 1400Z-1 to 1400Z-2), with respect to opportunity zones. Note that Subchapter N, which includes IRC sections 861 to 999, has historically not been operative for Hawaii tax purposes. Senate Bill 2821 also revises another Hawaii statute, Hawaii Rev. Stat. section 235-2.4, to specifically address the operation of certain IRC provisions found in sections 63 to 530. There are many changes to this statutory section that are related to tax reform and must be considered by individual and corporate taxpayers.

Connecticut Senate Bill 11 (signed May 31, 2018): Connecticut is a rolling conformity state, so while the state did not have to act to update its conformity to the Code, it nevertheless adopted significant legislation related to federal tax reform. Under Senate Bill 11, a new entity level tax applies to each "affected business entity" that is required by state law to file a return with Department of Revenue Services under Conn. Gen. Stat. § 12-726. This statute sets forth information required to be reported by partnerships and S Corporations doing business in Connecticut. Under Senate Bill 11, entities subject to this statute must file an entity tax return on or before the 15th day of the third month following the close of each entity's taxable year for federal income tax purposes.

An "affected business entity" is defined as any partnership, including a limited liability company (LLC), that is considered a partnership for federal income tax purposes or any corporation treated as an S corporation for federal tax purposes. It does not include publicly-traded partnerships that have agreed to file an annual return reporting the name, address, Social Security or federal employer identification number, and other Department of Revenue Services-required information for each unitholder whose income from Connecticut sources was more than $500.

An affected business entity's taxable income equals:

1. The entity's separately and non-separately stated income, as described in Section 702(a) of the Internal Revenue Code that is derived from or connected to Connecticut sources,
2. As increased or decreased by any adjustments under Connecticut's personal income tax law that are related to the business's income, gain, loss, or deduction, to the extent derived or connected to Connecticut sources.

In determining their taxable income, affected business entities must use the individual income tax sourcing rules under Conn. Gen. Stat. § 12-711 to determine income, gains, losses, or deductions that are derived from, or are connected to, Connecticut sources. If the end result is a net loss, the entity may carry the loss forward until it is fully used. The tax is imposed at a rate of 6.99 percent, the highest current individual income tax rate.

In addition to the new entity-level tax, Senate Bill 11 also makes several tax base changes, including a new subtraction modification for corporations. This new modification provides a deduction for the amount of any contribution made by the state of Connecticut or its political subdivisions to the extent included in gross income under IRC section 118(b)(2). For income years beginning on or after

January 1, 2018, the deduction for business interest paid or accrued shall be determined under the Code except that the provisions of section 163(j) shall not apply. Finally, for corporations, for tax years beginning on or after January 1, 2018, Senate Bill 11 requires corporations to add back eighty percent of deductions claimed under IRC section 179. Twenty-five percent of the disallowed section 179 deduction can be claimed as a deduction in each of the four subsequent tax years. Connecticut had already decoupled from bonus depreciation for corporations, so no changes were required to address the treatment of bonus depreciation at the corporate level.

As mentioned in the checklist, effective for income years commencing on or after January 1, 2017, expenses related to dividends will equal five percent of all dividends received by a company during an income year. Under Connecticut law, amounts included in income under IRC section 965 are treated as dividends.

Iowa Senate File 2417 (signed May 30, 2018): For the current tax year, the definition of the Internal Revenue Code for individual income, corporate, and franchise tax purposes is the Internal Revenue Code of 1986 as amended to and including January 1, 2015. For tax years beginning during the 2019 calendar year, Senate File 2417 amends the definition of "Internal Revenue Code" to mean the Internal Revenue Code of 1986 as amended and in effect on March 24, 2018. For tax years beginning on or after January 1, 2020, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended. It appears, therefore, that (absent future legislation) Iowa will not adopt any tax reform changes enacted as part of the Tax Cuts and Jobs Act until the 2019 tax year when the state adopts the Code as of March 24, 2018. Senate File 2417 also provides that for tax years beginning on or after January 1, 2020, Iowa will no longer be a fixed-date state and will adopt the Internal Revenue Code as in effect for the tax year at issue.

Indiana House Bill 1316 (signed May 14, 2018): House Bill 1316 revises the definition of "Internal Revenue Code" to mean the Internal Revenue Code of 1986 as amended and in effect on February 11, 2018.

That said, Indiana does not adopt many of the changes enacted as part of the Tax Cuts and Jobs Act. However, rather than simply decoupling from the federal Code section incorporating the tax reform change, House Bill 1316 decouples from the federal changes largely by revising the provisions of Indiana law that make modifications to federal taxable income in computing Indiana tax liability, notably Ind. Code § 6-3-1-3.5(b), which governs the computation of "taxable income" for corporations. Similar adjustments are required in computing the income of individuals, insurance companies, financial institutions, and trusts and estates. All these provisions are effective for tax years beginning after December 31, 2017 unless an earlier effective date is provided.

Specifically, the revisions to Ind. Code § 6-3-1-3.5(b), which addresses the Indiana taxable income of corporations, include the following:

- The provision requiring an add back for any amount deducted under IRC section 199 is eliminated. This makes sense given that the IRC section 199 deduction is repealed under the Tax Cuts and Jobs Act.
- An add back is required for any directly related interest expenses (as defined in Ind. Code. § 6-3-2-20) that reduced the corporation's adjusted gross income (determined without regard to the modifications statute). The amount of interest that is considered to have reduced the corporation's adjusted gross income equals: (i) the directly related interest expense that reduced the taxpayer's federal taxable income; plus (ii) any directly related interest expenses for which a subtraction is allowable under the state's related party add back rules; minus (iii) any directly related interest expenses required to be added back under those rules because an exception does not apply. This is not a new add back requirement, but the mechanism for making the add back is modified and separated from the addback required for intangible expenses.
- For taxable years beginning after December 25, 2016, corporations (other than a REIT) must add an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1. This is the total amount required to be included in income by reason of IRC section 965(a), which is

the amount of mandatory repatriation before the participation exemption. REITs do not report repatriation on the IRC 965 Transition Tax Statement; such amounts are included in a REIT's federal taxable income. Thus, REITs must add an amount equal to the deduction for deferred foreign income that was claimed by the taxpayer for the taxable year under IRC section 965(c), but only to the extent that the taxpayer included income pursuant to IRC section 965 in its taxable income for federal income tax purposes or was required to add back dividends paid to a captive REIT (as required under Indiana law).

— Corporations must add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under IRC section 250(a)(1)(B) (attributable to global intangible low-taxed income or GILTI). This is the special deduction that reduces the effective rate of tax imposed on GILTI. The taxpayer must separately specify the amount of the reduction under IRC section 250(a)(1)(B)(i), which is the total amount of GILTI included in income under section 951A, and under IRC section 250(a)(1)(B)(ii), which is the amount treated as a dividend under IRC section 78.

— A subtraction is allowed for any interest expense paid or accrued in the current taxable year, but not deducted as a result of the limitation imposed under IRC section 163(j)(1). There is no guidance on how the amount not allowed at the federal level should be determined if the federal and Indiana filers differ. However, this addback means that Indiana does not conform to the limitations imposed on the deductibility of interest at the federal level. To capture any federal disallowed interest expense subsequently carried forward and deducted for federal purposes, taxpayers must add any interest expense paid or accrued in a previous taxable year, but allowed as a deduction under IRC section 163 in the current taxable year. Thus, taxpayers will need to know when doing Indiana compliance whether any portion of the federal interest deduction for a particular year is a carry forward of previously disallowed interest.

— Indiana does not adopt the federal change that requires certain state and local tax incentives to be included in taxable income. As such, taxpayers must subtract the amount included in the taxpayer's gross income under IRC section 118(b)(2) for taxable years ending after December 22, 2017.

Based on a reading of the revised Indiana modifications statute, it would appear that the state would include certain foreign income (specifically mandatory repatriation amounts and GILTI) in the tax base. However, the definition of a foreign source dividend is expanded to provide exclusions for both mandatory repatriation and GILTI. Under Ind. Code § 6-3-2-12, a corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction. The definition of "foreign source dividend" has been amended to include any amount that a taxpayer is required to include in its gross income for a taxable year under IRC sections 951 and 951A, and for taxable years beginning after December 25, 2016, any amounts required to be included in adjusted gross income after application of the addback for amounts included in income from line 1 of the IRC Section 965 Transition tax Statement. This clarifies that mandatory repatriation and GILTI will be eligible for a foreign source dividend deduction. Under Indiana law, the subtraction allowed is equal to:

— 100 percent of foreign source-dividend received from 80 percent-or-more-owned foreign corporations;

— 85 percent of foreign source dividend received from less-than-80 percent but more-than-50 percent-owned foreign corporations; and

— 50 percent of foreign source dividend received from less-than-50 percent owned foreign corporations.

House Bill 1316 also revises Ind. Code § 6-3-2-2, which addresses how to determine adjusted gross income derived from sources within Indiana for corporations and nonresident persons. For taxable years beginning after December 25, 2016, if a taxpayer is required to include amounts in federal taxable income, or on IRC 965 Transition Tax Statement, line 1, as a result of IRC section 965, the following apply:

— For an entity that is not eligible to claim a deduction under Ind. Code § 6-3-2-12 (the deduction allowed corporations for a foreign source dividends) these amounts will not be receipts in any taxable year for the entity.

— For an entity that is eligible to claim a foreign source dividend deduction, these amounts will be receipts, but only to the extent of the amount added from the IRC section 965 Transition Tax Statement, minus the foreign source dividends deduction. This applies regardless of the taxable year in which the money or property was actually received.

If a taxpayer is required to include amounts in the taxpayer's federal adjusted gross income or federal taxable income as a result of IRC section 951A the following applies:

— For an entity that is not eligible to claim a foreign source dividend deduction under Ind. Code § 6-3-2-12, the receipts that generated the income will not be included as a receipt in any taxable year.

— For an entity that is eligible to claim a deduction for foreign source dividends, the amounts included in federal gross income as a result of Section 951A of the Internal Revenue Code, reduced by the deduction allowable for foreign source dividends with regard to that income, will be considered a receipt in the year in which the amounts are includible in federal taxable income.

Receipts will not include receipts derived from sources outside the United States to the extent the taxpayer is allowed a deduction or exclusion in determining both the taxpayer's federal taxable income as a result of the federal Tax Cuts and Jobs Act of 2017 and the taxpayer's adjusted gross income under Indiana law. If any portion of the federal taxable income derived from these receipts is deductible under Ind. Code § 6-3-2-12, the receipts must be reduced by the proportion of the deduction allowable under Ind. Code § 6-3-2-12 with regard to that federal taxable income.

Receipts includible in a taxable year will be considered dividends from investments for apportionment purposes. Under Ind. Code § 6-3-2-2.2, which addresses interest income, discounts, and receipts attributable to Indiana, receipts in the form of dividends from investments are attributable to Indiana if the taxpayer's commercial domicile is in Indiana.

Indiana requires taxpayers to compute their own Indiana NOL, but previously conformed to the federal NOL carryforward period. House Bill 1316 provides that an Indiana NOL may not be carried over for more than 20 taxable years after the taxable year of the loss. Under the Tax Cuts and Jobs Act, NOLs can be carried forward indefinitely for federal purposes. Indiana does not adopt the limitation on the use of losses that now applies at the federal level.

Kentucky House Bill 366 (enacted April 13, 2018): Under House Bill 366, for tax years beginning on or after January 1, 2018, the definition of Internal Revenue Code means the Internal Revenue Code in effect on December 31, 2017, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2017 that would otherwise terminate.

New York Assembly Bill 9509C and Senate Bill 7509C (signed April 12, 2018): The budget bills address the taxation of income required to be repatriated to the U.S. as a result of federal tax reform for both New York State and New York City tax purposes. Both the State and the City have rolling conformity to federal taxable income, so the state was not required to update its conformity to the Internal Revenue Code to capture tax reform. However, the budget bills specifically address the treatment of amounts repatriated under IRC section 965 and foreign derived intangible income (FDII). The final budget does not include an exclusion from entire net income for global intangible low taxed income (GILTI).

Under New York law, entire net income, minus net investment income and net other exempt income, subject to certain modifications, equals a taxpayer's business income. "Other exempt income" means the sum of exempt Controlled Foreign Corporation (CFC) income and exempt unitary corporation dividends. The budget bills expand the definition of "exempt CFC income" specifically to include amounts required to be included in the taxpayer's federal gross income under IRC section 951(a) by reason of IRC section 965(a) without regard to IRC section 965(c) that are received from a corporation not included in a combined report with the taxpayer. The pre-existing definition of "exempt CFC income" included income required to be included in the taxpayer's federal gross income under IRC section 951(a) that was received from a corporation conducting a unitary business with the taxpayer and was not included in a combined report with the taxpayer. As a result, the exclusion for mandatory repatriation is somewhat broader than current law in that there is no requirement that the taxpayer and the CFC be unitary for the CFC income to be exempt.

Note that under New York law, deductions for interest expenses and other expenses attributable to "other exempt income" are eliminated from entire net income. In lieu of attributing interest expenses to other exempt income, taxpayers may elect to simply reduce investment or other exempt income by 40 percent. The budget bills provide an exception to the rules for underpayment of estimated taxes that call for any increase in a taxpayer's tax attributable to the expense disallowance provisions or the 40 percent election to be ignored.

Under New York law, entire net income is to be determined without the exclusion, deduction, or credit of various enumerated items. These provisions have been revised for State and City purposes to provide that entire net income shall be determined without (i) the amount of any federal deduction allowed pursuant to IRC section 965(c), and (ii) the amount of any federal deduction allowed pursuant to IRC section 250(a)(1)(A). IRC section 250(a)(1)(A) allows a deduction for 37.5 percent of the FDII of a domestic corporation. Taken together, these changes mean that there is no additional deduction under IRC section 965(c) allowed to New York taxpayers, and New York will not conform to the federal deduction that results in FDII being taxed at a beneficial rate.

Nebraska Legislative Bill 1091 (signed April 11, 2018): Nebraska's conformity to the Internal Revenue Code was updated to the Internal Revenue Code of 1986 as it existed on the date of enactment of the conformity bill (April 11, 2018) and except as otherwise provided under Nebraska law.

Oregon Senate Bill 1529 (signed April 10, 2018): Oregon has somewhat unique conformity to the Code, as the state adopts the code as of a specific date, but has rolling conformity to changes that relate to the definition of taxable income. Senate Bill 1529 defines "Internal Revenue Code" as the federal Internal Revenue Code, as amended and in effect on December 31, 2017. Although generally applicable to tax years beginning on or after January 1, 2018, Senate Bill 1529 provides that federal changes enacted before January 1, 2018 apply for corporate excise tax purposes, to the extent they can be made applicable, in the same manner as applied under the Internal Revenue Code and related federal law. For tax years beginning on or after January 1, 2017, Senate Bill 1529 requires taxpayers to add back amounts deducted from federal income for income repatriated, deemed or otherwise, under the Tax Cuts and Jobs Act. Senate Bill 1529 also repeals Oregon's tax haven inclusion provisions retroactively to 2017 and provides for a tax credit to recognize the interaction between tax payments required by Oregon's tax haven law and repatriation-related tax payments. In other words, to the extent a taxpayer has already paid Oregon tax on the deferred E&P due to the tax haven provisions, a credit will be allowed.

Arizona House Bill 2647 (signed April 5, 2018): For purposes of computing Arizona income taxes, Internal Revenue Code means, for taxable years beginning from and after December 31, 2017, the Internal Revenue Code of 1986 as amended and in effect on January 1, 2017. For tax years beginning from and after December 31, 2016 through December 31, 2017, the Code likewise means the Internal Revenue Code as in effect on January 1, 2017, but includes those provisions of The Disaster Tax Relief and Airport and Airway Extension Act of 2017 (P.L. 115-63), The Tax Cuts and Jobs Act (P.L. 115-97), and The Bipartisan Budget Act of 2018 (P.L. 115-123) that are effective retroactively during taxable years beginning from and after December 31, 2016 through December 31, 2017. In short, for 2018, Arizona does not adopt the tax changes included in the Tax Cuts and Jobs Act, but it does pick up the changes in the Act that became effective for the 2017 tax year.

Wisconsin Assembly Bill 259 (signed April 3, 2018): Wisconsin Assembly Bill 259, which was signed into law on April 3, 2018, updates Wisconsin's conformity to the Internal Revenue Code. Specifically, for taxable years beginning after December 31, 2016 and before January 1, 2018, for corporations, Internal Revenue Code means the Code as amended to December 31, 2016 with certain exceptions. One exception is that the Code includes certain changes made to federal law under P.L. 115-97 (the Tax Cuts and Jobs Act). Notably, Wisconsin will apply Section 11024 (increased contributions to able accounts); Section 11025. (rollovers to able programs from 529 programs); and Section 13543 (modification of treatment of s corporation conversions to c corporations).

For tax years beginning after December 31, 2017, for corporations, Internal Revenue Code means the Code as amended to December 31, 2017, again with various exceptions. There are numerous provisions of P.L. 115-97 that do not apply for Wisconsin tax purposes, including, but not limited to: Section 11011 (the deduction for qualified business income of pass-through entities under section 199A); Section 13201(a) (100 percent bonus depreciation); Section 13304(a), (b) and (d) (addressing deductions by employers of certain fringe benefits – note that Wisconsin does adopt Section 13304(c), which limits deductions for certain transportation fringe benefits); Section 13301 (limits on deducibility of business interest under section 163(j)); and Sections 14103, 14201 and 14202 (collectively, these sections address mandatory repatriation under IRC section 965, new section 951A requiring inclusion of GILTI, and the deductions for GILTI and FDII under section 250). The Wisconsin Department of Revenue issued a nine-page memo outlining whether the state does or does not adopt the tax reform change.

Florida House Bill 7093 (signed March 23 2018): House Bill 7093 updates the definition of Internal Revenue Code to mean the Internal Revenue Code of 1986 as amended and in effect on January 1, 2018. Florida continues to decouple from bonus depreciation allowed under Internal Revenue Code section 168(k). House Bill 7093 recognizes that the Tax Cuts and Jobs Act will have a significant effect on the state corporate income tax and corporate taxpayers when it is fully implemented. As such, the Legislature directs the Department of Revenue to track federal guidance on the tax reform changes and to conduct at least two public workshops to gather public input. In addition, the Department must develop a process outside of the public workshops for receiving public input regarding the Tax Cuts and Jobs Act and its potential effects on the state corporate income tax and the businesses that pay the tax. At two points during 2018, the Department will provide status updates to chairs of the appropriate legislative committees. A report addressing certain items, including options for changes the Legislature could make to integrate state law with federal law, must be submitted to the Governor and key members of the legislature by February 1, 2019. House Bill 7093 takes effect upon becoming law and operates retroactively to January 1, 2018.

Georgia House Bill 918 (signed March 2, 2018) and Senate Bill 328 (signed March 27, 2018): For tax years beginning on or after January 1, 2017, Internal Revenue Code means the Internal Revenue Code as of February 9, 2018, except for a number of specifically enumerated sections. Many of these sections, such as section 168(k), historically have not been adopted in Georgia. However, House Bill 918 makes a few revisions to the list of sections that are not adopted or are adopted as of a specific date. For example, Internal Revenue Code sections 118, 163(j) and 382(k)(1) will apply as they were in effect before the enactment of the Tax Cuts and Jobs Act. House Bill 918, and subsequent Senate Bill 328, provides some guidance on the Georgia treatment of federal global intangible low-taxed income or GILTI. Notably, income specified under new section 951A (GILTI) will be treated as Subpart F income that can be subtracted in computing Georgia taxable net income. The deduction under section 250, which is the deduction that reduces the rate of tax applied to GILTI and foreign-derived intangible income (FDII), applies, but only to the extent the income is included in Georgia taxable net income. Finally, no deduction under section 245A or 965 is allowed to the extent the associated income has been subtracted as a foreign dividend. With respect to NOLs, House Bill 918 provides that "[a]ny limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income."

Michigan Senate Bill 748 (signed February 28, 2018): The definition of "Internal Revenue Code" has been revised and means the Internal Revenue Code of 1986 in effect on January 1, 2018 or at the option of the taxpayer, in effect for the tax year.

Virginia House Bill 154 and Senate Bill 230 (enacted February 23 and 22, 2018): These companion conformity bills advance Virginia's date of conformity to the Internal Revenue Code from December 31, 2016 to February 9, 2018 with certain exceptions, including an exception that applies to the provisions of the Tax Cuts and Jobs Act. However, the lack of conformity to the Tax Cuts and Jobs Act does not apply to any provisions of that Act that affect the computation of federal adjusted gross income for individuals or federal taxable income for corporations for taxable years beginning after December 31, 2016 and before January 1, 2018. Per the bills' fiscal impact statements, for corporations, this includes certain provisions of the Tax Cuts and Jobs Act that were effective for transactions or amounts paid after the date of enactment, including the denial of a deduction for settlements subject to a nondisclosure agreement paid in connection with sexual harassment, expansion of the provision relating to the non-deductibility of fines and penalties, repeal of the deduction for local lobbying expenses, and revisions to the treatment of contributions to capital. The bills are "emergency bills" that are deemed in force from passage.

West Virginia House Bill 4135 (signed February 21, 2018): West Virginia updated its law to adopt the Internal Revenue Code as of January 1, 2018. Specifically, under House Bill 4135, all amendments made to the laws of the United States after December 31, 2016, but prior to January 1, 2018, shall be given effect in determining the taxes imposed under the corporation net income tax article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective. No amendment to the laws of the United States made on or after January 1, 2018 shall be given any effect. In terms of effective dates, House Bill 4135, consistent with earlier conformity updates, provides that "the amendments to this section enacted in the year 2018 are retroactive to the extent allowable under federal income tax law." "With respect to taxable years that began prior to January 1, 2018, the law in effect for each of those years shall be fully preserved as to that year."

Idaho House Bill 355 (signed February 9, 2018) and Idaho House Bill 463 (signed March 12, 2018): Idaho House Bill 463 makes minor amendments to House Bill 355 and also addresses the 2018 tax year. Together, under these bills, the term "Internal Revenue Code" means, for taxable years beginning on any day of 2017, the Internal Revenue Code of 1986, as amended, and in effect on December 21, 2017. However, IRC sections 965 and 213, are applied as in effect on December 31, 2017 (post-tax reform). For taxable years beginning on or after the first day of January 2018, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, and in effect on the first day of January 2018. House Bill 355 requires that corporations add back amounts deducted under IRC section 965. House Bill 463 further requires an addback of amounts deducted under IRC sections 245A, 250, and 965.

South Dakota House Bill 1049 (signed February 5, 2018): For bank tax purposes, House Bill 1049 updates the state's conformity to the Internal Revenue Code as amended and in effect on January 1, 2018.