



# TWIST-Q | Summary of developments - 3rd Quarter 2018

Rate changes	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
The corporate rate structure for tax years beginning after December 31, 2017 is the following: 3.5 percent on income not over \$350,000, 7.93 percent on income not over \$1,050,000, 8.33 percent on income not over \$3,500,000 and 8.93 percent on income of \$3,500,000 or more. Previously, the 8.93 percent rate applied to income of \$250,000 or more. Senate Paper 612 (enacted Sept. 12, 2018).	ME				
The alternative minimum tax imposed on corporations is repealed effective for tax years beginning on or after January 1, 2018. Senate Paper 612 (enacted Sept. 12, 2018).	ME				
For all tax years beginning in a calendar year in which there is a reduction in the rate of tax imposed under the corporate income tax law, there shall be a corresponding and proportional reduction in the rate of franchise tax imposed on banks, thrifts, and credit institutions. Missouri's corporate income tax rate is scheduled to drop 36 percent from 6.25 percent to 4.0 percent for all tax years beginning on or after January 1, 2020. Thus, the current 7.0 percent franchise tax rate applicable to banks, thrifts and credit institutions should likewise be reduced by 36 percent to 4.48 percent beginning for the same period. Senate Bill 769 (signed July 5, 2018).	MO				

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<p>Corporation Business Tax taxpayers, except public utilities, having allocated New Jersey net income in excess of \$1 million are subject to an additional 2.5 percent rate of tax for the privilege periods beginning on or after January 1, 2018 through December 31, 2019. For privilege periods beginning on or after January 1, 2020 through December 31, 2021, the additional tax rate for taxpayers with allocated net income in excess of \$1 million is 1.5 percent. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				
<p>To be considered a qualified New York manufacturer, a taxpayer had to establish that (1) it was a manufacturer; (2) it had property in New York that was described in New York Tax Law § 210(12)(b)(i)(A); and (3) either the adjusted basis of that property for federal income tax purposes was at least equal to \$1 million or all of its real and personal property was located in New York. Because the qualifying property (1) had to be used to manufacture goods and (2) goods did not include electricity, the property of a manufacturer principally engaged in the production of electricity did not meet the property requirements for a “Qualified New York manufacturer” entitled to benefit from a capital tax base cap for the tax years at issue. <i>Matter of Transcanada Facility USA, Inc.</i> (N.Y. Div. Tax App. June 7, 2018).</p>	NY				

Nexus	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
A corporate owner of a single-member LLC leasing airplanes in Kentucky was doing business in Kentucky and had corporate income tax nexus. The corporation must include the LLC's apportionment information in computing its Kentucky sales factor. KY-GIL-18-01 (Kentucky Dep't of Revenue July 24, 2018)	KY				
A taxpayer that earned receipts from in-state customers had "income derived from sources" in Oregon and therefore was subject to the state's corporate income tax, despite lacking a physical presence in the state. <i>Capital One Auto Finance, Inc. v. Dep't of Revenue</i> . (Ore. Aug. 9, 2018).	OR				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
The Department has issued guidance providing that any taxpayer, or taxpayer filing as part of a federal consolidated group, that paid or accrued transition tax must remove the transition tax from the standard calculation of Alabama's federal income tax deduction. In the Department's view, transition tax is allowed as a component of the federal income tax deduction only if some portion of the IRC section 965 income remains in the Alabama tax base after related Alabama deductions are allowed. NOTICE: Additional Guidance for Corporate Taxpayers subject to the IRC Section 965 (Ala. Dep't of Revenue June 22, 2018).	AL				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>Any amounts included in income under IRC section 965 must also be included in the amount of federal taxable income reported on the taxpayer's corporate return. If a taxpayer subject to Colorado corporate income tax apportionment and allocation properly claims a federal deduction or federal credit for foreign taxes paid on IRC section 965 income, a corresponding portion of the income will be eligible for the foreign source income exclusion on the taxpayer's Colorado return. Supplemental Instructions for Colorado Income Tax Filing (Colorado Dep't of Revenue June 11, 2018).</p>	CO				
<p>Because GILTI is treated in a manner similar to Subpart F income for federal tax purposes, Connecticut will treat GILTI as dividend income and will extend the 100 percent dividends-received deduction to GILTI. However, Connecticut requires taxpayers to add back expenses attributable to dividend income, defined to mean five percent of dividend income. Thus, the addback should equal five percent of the gross amount of GILTI prior to any corresponding federal deduction. Special Notice 2018(7) (Connecticut Dep't Revenue Services July 20, 2018).</p>	CT				
<p>C-Corporations are allowed an exclusion for amounts included in income under IRC section 965. However, an addition must be made on the Georgia return for expenses that are directly attributable to the net amount after the section 965(c) deduction. Policy Bulletin IT 2018-01 (Georgia Dep't of Revenue June 26, 2018).</p>	GA				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>For tax years beginning on or after January 1, 2018, GILTI is considered nontaxable income for Kentucky income tax purposes and the IRC section 250 deduction and any expenses related to GILTI must be added back. If the actual expenses cannot be determined, a Kentucky regulation provides for various estimation methods that may be used to calculate the amount of expenses related to the nontaxable income. Finally, because Kentucky excludes non-taxable income from the computation of the sales factor, GILTI will likewise be excluded from the sales factor. KY TAM-18-02.</p>	KY				
<p>References to the Internal Revenue Code are revised to refer to the Code as amended through March 23, 2018 applicable retroactively to tax years beginning on or after January 1, 2017. Senate Paper 612 (enacted Sept. 12, 2018).</p>	ME				
<p>A deduction is allowed for any NOLs that are not able to be deducted for federal purposes due to the 80 percent federal limitation. A corresponding provision requires an addback for any NOLs deducted for federal purposes that were previously allowed as an NOL deduction for Maine purposes. Senate Paper 612 (enacted Sept. 12, 2018).</p>	ME				
<p>A deduction is allowed for 50 percent of a taxpayer's apportionable Subpart F income, 80 percent of amounts included in income under IRC section 965, and 50 percent of the taxpayer's apportionable GILTI. Both the deductions for Subpart F income and GILTI are net of related expenses. Any Subpart F income deducted is also excluded from the apportionment factor. For GILTI, the amount included in the apportionment factor is 50 percent of the section 951A income included in federal gross income. An addition is required for any amounts deducted under section 965(c) and the GILTI deduction allowed under section 250(a)(1)(B). Senate Paper 612 (enacted Sept. 12, 2018).</p>	ME				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>The Department of Treasury has preliminarily concluded that GILTI will be deducted as a dividend from a foreign entity, similar to other Subpart F income, in determining the Michigan Corporate Income Tax Base. Notice: Corporate Income Tax Guidance on Federal "Tax Cuts and Jobs Act" (Mich. Dep't of Treas. July 2, 2018).</p>	MI				
<p>For privilege periods beginning after December 31, 2016, an exclusion applies to 95 percent of dividends included in federal taxable income that were paid or deemed paid by 80 percent of more owned subsidiaries. For privilege periods beginning on and after January 1, 2017, for the purposes of computing entire net income, a taxpayer is not allowed any deduction, exemption, or credit allowed under IRC section 965. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				
<p>For tax years beginning on or after January 1, 2018, an addback for interest and intangible expenses paid to foreign related members will not be required if the foreign related member's income received from the transaction is taxed at a rate equal to or greater than three percentage points of the rate of tax applied by New Jersey. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				
<p>For privilege periods beginning after December 31, 2017, the interest deduction limitation in IRC section 163(j) is applied on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to the state's related party interest addback rules. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>If the adoption of mandatory unitary combined reporting results in an aggregate increase to the members' net deferred tax liability, or an aggregate decrease to the members' deferred tax assets, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group is entitled to a new deduction to offset the increase in the net deferred tax liability or decrease in the net deferred tax assets. Assembly Bill 4202 (signed July 1, 2018).</p>	NJ				
<p>North Dakota will treat section 965 income as Subpart F income. As such, IRC section 965(a) income will be included in the North Dakota tax base and the section 965(c) deduction must be added back to North Dakota taxable income. If a worldwide combined return is filed and the controlled foreign corporation to which the 965 income is attributed is included in the group, the 965 inclusion is eliminated as an intercompany dividend. For groups filing a water's-edge combined return, 70 percent of the section 965 income is deductible as a foreign dividend. Notice: North Dakota Tax Treatment of International Tax Provisions (N.D. St. Tax Comm.)</p>	ND				
<p>North Dakota will treat GILTI as a foreign dividend comparable to Subpart F income. The GILTI deduction under section 250 must be added back as a deduction for dividends received. If a worldwide combined return is filed and the controlled foreign corporation to which the GILTI is attributed is included in the group, the GILTI is eliminated as an intercompany dividend. For groups filing a water's-edge combined return, 70 percent of GILTI is deductible as a foreign dividend and 30 percent of the GILTI is included in the sales factor. There is no add back required for the section 250 deduction for FDII because it does not relate to a deduction for dividends received. Notice: North Dakota Tax Treatment of International Tax Provisions (N.D. St. Tax Comm.).</p>	ND				

Tax base	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
For property placed in service after September 27, 2017, a corporate taxpayer is required to add back federal bonus depreciation, but is then entitled to a depreciation deduction equal to the depreciation on the property for the taxable year as determined in accordance with Internal Revenue Code sections 167 and 168 without the application of Internal Revenue Code section 168(k). This applies for tax years beginning on or after January 1, 2017. Senate Bill 1056 (signed June 28, 2018).	PA				
Net 965 Income is includible in income and no dividends-received deduction applies if the Net 965 Income is attributable to a foreign corporation subsidiary that is not a member of the combined group due to the water's-edge rules. If the foreign corporation is a member of the unitary combined group, the Net 865 Income is eliminated as an intercompany item only to the extent such Net 965 Income is attributable to accumulated deferred foreign income earned by the foreign corporation subsidiary during periods in which it was a combined group member. If the section Net 965 Income is received from a non-unitary foreign subsidiary, then a dividends-received deduction applies based on ownership of the foreign subsidiary. 280-RICR-20-25-15 (effective July 22, 2018).	RI				
A telecommunications provider was not allowed to deduct as costs of goods sold electricity used to generate and transmit its telecom products. In the court's view, the taxpayer's products were services, not goods, and there was no specific provision of law allowing the COGS deduction that applied to the taxpayer. <i>NTS Communications, Inc. v. Hegar</i> (Tex. Ct. App. June 7, 2018).	TX				
For the last taxable year of a taxpayer beginning on or before December 31, 2017, "unadjusted income" includes deferred foreign income described in IRC section 965(a). House Bill 2002 (signed July 21, 2018).	UT				

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For tax years beginning on or after January 1, 2018, the three-year NOL carryback provision is repealed and an unlimited NOL carryforward period applies. Also, the amount of NOLs that can be carried forward each year can only offset 80 percent of Utah taxable income. House Bill 2003 (signed July 21, 2018).	UT				
Effective retroactively on January 1, 2018 and applicable for tax years beginning on or after January 1, 2017, Vermont adopts the statutes of the United States relating to the federal income tax as in effect on December 31, 2017. House Bill 16 (enacted July 1, 2018).	VT				

Apportionment developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
A taxpayer that outsourced all of its manufacturing was nevertheless a "manufacturer" required to use single-sales factor apportionment because its activities throughout the process of design to ultimate production constituted transformation of raw materials into a new product. Also, the taxpayer's employees physically interacted with the products throughout the production process and their feedback resulted in substantial modifications to the products. <i>Decker's Outdoor Corp. v. Commissioner of Revenue</i> (Mass. App. Tax Bd. June 18, 2018).	MA				
A prior Minnesota Supreme Court decision did not preclude the Commissioner from exercising her "plain statutory authority" to rebut the presumption that the statutory apportionment method produced fair and correct results. The Commissioner presented substantial evidence to show that the taxpayers' use of the statutory method did not fairly reflect their taxable net income allocable to Minnesota and that the Commissioner's alternative method did so. <i>Assoc. Bank. v. Commissioner of Revenue</i> (Minn. July 5, 2018).	MN				

Apportionment developments	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>For the 2017 privilege period only, for purposes of calculating the tax liability owed for the deemed dividends included in entire net income, a taxpayer will use either its three-year average allocation factor for the taxpayer's 2015 through 2017 tax years reported on the taxpayer's tax returns or 3.5 percent, whichever is lower. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				
<p>Effective for privilege periods beginning on or after January 1, 2019, service receipts will be sourced to New Jersey if the benefit of the service is received at a location in the state. If the benefit of the service is received both at a location within and outside of New Jersey, the portion of the sale attributed to New Jersey is based on the percentage of the total value of the benefit of the service received at a location in New Jersey or a reasonable approximation to the total value of the benefit of the service received in all locations both within and outside New Jersey. Assembly Bill 4202 (enacted July 1, 2018).</p>	NJ				
<p>Receipts from intangible property are sourced to North Carolina if they are received from sources within the state. A bill enacted in June 2018 (Senate Bill 99) revised the treatment to source such receipts to North Carolina to the extent the intangible property was used in the state. Senate Bill 335 (enacted June 26, 2018).</p>	NC				
<p>A court rejected the Comptroller's attempt to apply market-based sourcing to a taxpayer's receipts. Under Texas law, if services are performed both inside and outside Texas, then the receipts are attributed to Texas in proportion to the <i>fair value</i> of the services that are rendered in Texas. Credible witnesses testified that the taxpayer performed approximately 0.36 percent and 0.20 percent of the fair value of its services in Texas for the two tax years at issue. <i>Sirius XM Radio, Inc. v. Hegar</i> (Dist. Ct. Travis County Aug. 3, 2018).</p>	TX				

Filing methods	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
On or after August 28, 2018, in computing the Missouri sales factor, intercompany sales and business transactions between corporations that file a consolidated report shall be excluded. Senate Bill 773 (signed July 5, 2018).	MO				
Effective for privilege periods beginning on or after January 1, 2019, New Jersey adopts mandatory unitary combined reporting. The default method is water's-edge combined reporting, but groups can make a worldwide or affiliated group election. Assembly Bill 4202 (enacted July 1, 2018).	NJ				

Credits	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
In determining the Minnesota R&D credit, the Minnesota base amount is computed using federal gross receipts in the denominator of the fixed-base percentage. Furthermore, the state definition of "base amount" incorporates the federal minimum base amount provisions. However, Minnesota did not incorporate the federal election to use an alternative simplified credit. <i>General Mills, Inc. v. Commissioner</i> (Minn. Tax Ct. Aug. 17, 2018).	MN				
For privilege periods beginning on or after January 1, 2018, New Jersey has rolling conformity to the Internal Revenue Code for research credit purposes, and the state research credit is not refundable. Assembly Bill 4202 (enacted July 1, 2018).	NJ				
A new regulation explains the corporate tax credit allowed taxpayers that, as a result of Oregon's tax haven inclusion provisions, previously paid Oregon tax on income reported under IRC section 965 as post-1986 deferred foreign income. ORS 150-317-0651 (effective July 1, 2018).	OR				

Amnesty	State	Potential impact on current tax?	Potential impact on deferred taxes?	Potential impact on ASC 740-10?	Other/ Comments
<p>An upcoming amnesty program (dates to be determined) will allow taxpayers to claim amnesty for state tax liabilities, both known and unknown, due on or after February 1, 2009 and prior to September 1, 2017. A non-waivable five percent penalty will be imposed, in addition to all other penalties or interest authorized by law, on any state tax liability that is eligible to be satisfied during the amnesty period, but is not so satisfied. Assembly Bill 3438 (enacted July 1, 2018).</p>	NJ				

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