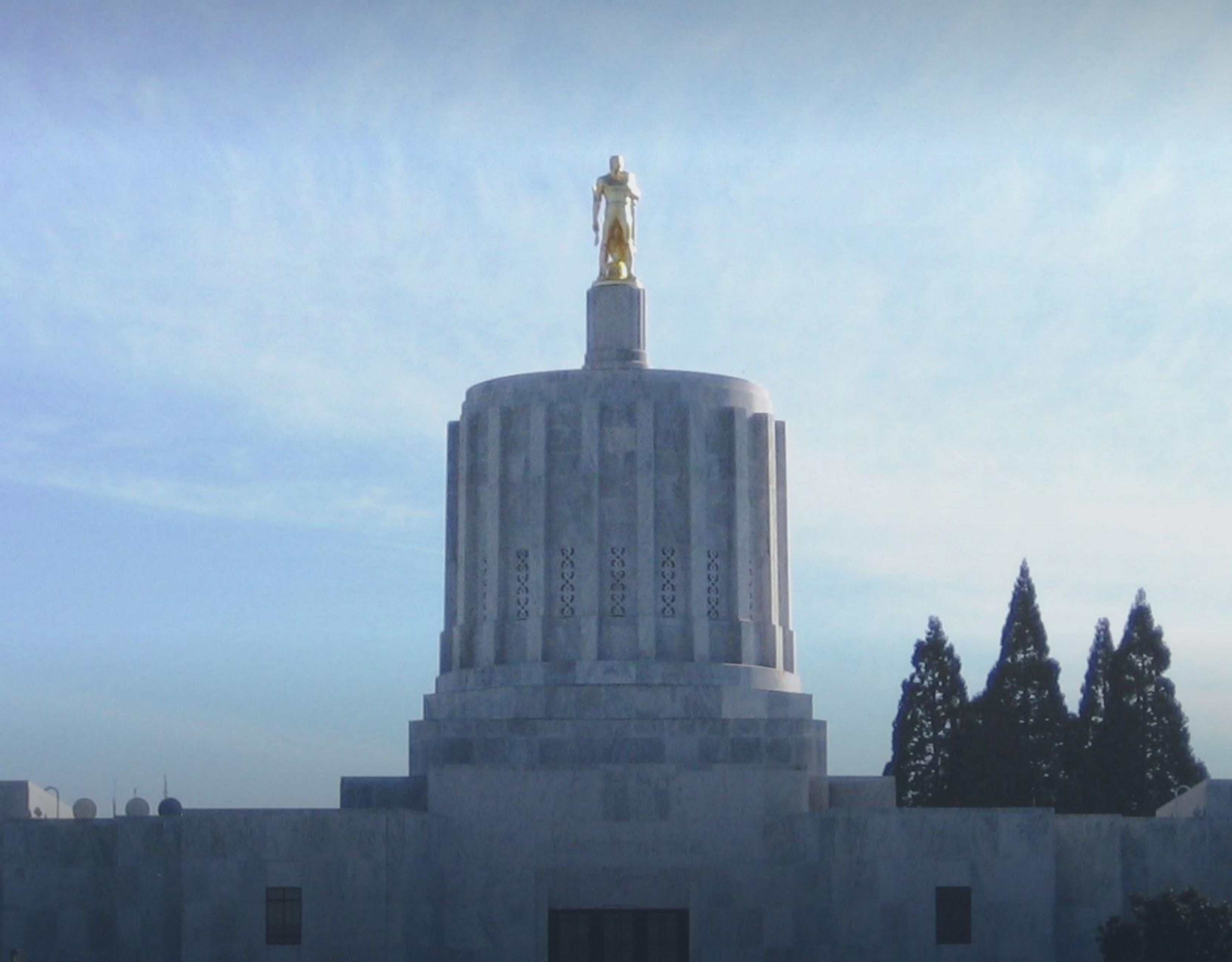
Walczak Policy



Oregon is an Outlier Among States Taxing Global Income

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Introduction

Oregon is among the minority of states that meaningfully tax businesses' international income. Recent years have seen multiple efforts to expand the reach of such provisions by mandating worldwide combined reporting, reducing a deduction for already-taxed foreign-source income, or repealing Oregon's conformity with the federal deduction for export income. These proposals would make Oregon more of an outlier in business taxation while drawing litigation, increasing administrative burdens, and—particularly with mandatory worldwide reporting—not guaranteeing any revenue increase.

Most importantly, while the tax increases are targeted at multinational businesses, to the extent that they raise additional revenue, much of the expense will be borne by Oregon consumers and in-state businesses in the form of higher prices and reduced in-state investment and employment opportunities. As this paper explains, even though the higher tax burdens are imposed based on international activity, the incidence is on sales in Oregon, whether those are business purchases or final consumer sales. Taxes intended to fall on large multinational corporations and their international operations instead function like tariffs.

Oregon already imposes a tax on the income of foreign subsidiaries of U.S.-based companies. Some in the Oregon policy community have called for increasing this tax's effective rate. State lawmakers have also considered changing the way that multinational businesses are taxed to make Oregon the only state to extend its tax base to every related foreign entity of any business with sales into Oregon. Finally, lawmakers have grappled with a proposal to raise taxes on U.S.-based exporters who employ Oregonians while selling into foreign markets.

These proposals are technical and complex, and all relate to the taxation of multinational businesses. These businesses, many (though not all) of which are large corporations, would be legally responsible for paying the higher taxes. Because of the way Oregon's corporate income tax is designed, however, two of the tax increases would largely fall on Oregon consumers in the form of higher prices, and the third would increase tax costs for companies that employ Oregonians rather than hiring in foreign labor markets.

This paper explains these complex tax considerations and demonstrates how tax increases that many lawmakers see as "free money" that can be extracted from multinational corporations are actually tax increases on Oregonians—and not just that, but essentially a tariff embedded in the prices of products sold into Oregon. The state's existing taxation of international business income already makes Oregon an outlier. Proposed changes would make the state more of an outlier in the competitive landscape while undercutting affordability for Oregon households.

The Current System

Corporate tax systems, in the United States and around the world, require procedures to account for cross-border income. But the system used by U.S. states is unique, differing from the approach used in all other countries. Any consideration of proposals for expanded taxation of international income must begin with a brief summary of the current system, and how the approach used by U.S. states differs from the systems used elsewhere.

States use a system called formulary apportionment to determine what share of a business's income should be apportioned to a given state for tax purposes. Each state is free to establish its own apportionment regime, within limits set by the U.S. Constitution and by Commerce Clause jurisprudence. While some states use three-factor apportionment, taking the locations of a company's payroll, property, and sales into account, most states (including Oregon) use single sales factor apportionment. This means that the share of a company's net income taxable in Oregon is based on its sales in Oregon. If 5 percent of a multistate or multinational business's sales are in Oregon, then Oregon can tax 5 percent of its profits.[1]

Large businesses are rarely a single entity. Instead, they involve a collection of subsidiaries and affiliated entities. Sometimes these entities are closely interrelated, functionally acting as a single business. Other times, businesses can share a corporate ownership structure but function independently of each other.

Within their apportionment regimes, some states treat each business entity separately, while many tax related corporations within the U.S. (parent companies, subsidiaries, and other affiliated entities) as a unitary group, based on factors like common ownership and common control. Whether this increases or decreases tax revenue will vary based on the activity of each unitary group. Oregon is a combined reporting state, but under a unique approach that taxes international income that remains outside the tax base in other states.[2]

Combined reporting takes away the advantage that companies might gain by shifting profits to a subsidiary in a lower-tax state, even if those profits were earned elsewhere. It also permits corporations to exclude intercompany transactions to prevent internal sales or expenses from distorting taxable net income or apportionment factors. Combatting profit-shifting is one of the key arguments for combined reporting, and it has validity. But of course, multistate companies earn income in other states in the ordinary course of business, and most differences in profitability across subsidiaries are not due to profit-shifting. Combined reporting brings in an apportioned share of all out-of-state activity, not just any potential profit-shifting activity.

Expanding the group to include companies without sales into Oregon dilutes the sales factor while expanding the pre-apportionment base. If all entities were equally profitable, revenue would be

[1] Steven Maguire, "State Corporate Income Taxes: A Description and Analysis," CRS Report for Congress RL32297 (Washington, DC: Congressional Research Service, June 23, 2008), 3–4.

[2] Richard D. Pomp, *State and Local Taxation*, 9th ed., vol. 2 (Hartford, CT: Richard D. Pomp, 2019), 10- 80–109.

identical: taxing 50 percent of $100 million in sales and taxing 5 percent of $1 billion in sales, for instance, both yield a state taxable base of $50 million. If profits from companies brought into the unitary group are higher than profits for those with which Oregon has a direct taxable connection (called nexus), combined reporting will increase Oregon's tax collections. If the profit margins of other members of the unitary group are lower, then combined reporting decreases revenues.

Oregon's approach to combined reporting is unique among states. Combined reporting states typically begin with all companies with common control that are engaged in a unitary business, with combination limited to U.S.-sourced income (a water's edge limitation, discussed later). But Oregon begins with federal consolidated taxable income and generally requires that corporations that are members of the same unitary business for federal purposes file an Oregon consolidated return. One consequence is that some related domestic businesses may be outside the group due to federal inclusion rules, disallowing exclusions for intercompany transactions that are available in other states. Another consequence of Oregon's unique approach is that its base includes international income that would be excluded from other states' tax bases.[3]

Every state with combined reporting currently uses water's edge combined reporting or at least allows taxpayers to make a water's edge election, meaning that only U.S. businesses are included in the unitary group for tax purposes, not those located abroad (beyond the water's edge). In Oregon, however, this is accomplished implicitly, not with a water's edge rule but by conforming to a federal rule that excludes foreign corporations but not foreign income. This means that a domestic company that operates entirely abroad could be included in the apportionable group in Oregon, whereas it would be excluded in other states.

Oregon, moreover, decouples from certain federal sourcing rules, taxing foreign income not subject to federal or other states' income taxes. A foreign corporation doing business in Oregon is taxed as if it were a domestic corporation, adding back foreign-source income that federal law excludes and that other states never reach because of their water's edge limitations.[4]

Foreign countries do not apportion corporate income. They use separate accounting, under which each entity is taxed by the country where it operates, on in-country profits and losses. Arm's-length transfer pricing is used for transactions with affiliates, to ensure that profits cannot be shifted by under- or overvaluing assets transferred across related entities, and credits are provided for taxes paid to other jurisdictions to avoid taxing profits earned abroad.[5]

Until the enactment of the Tax Cuts and Jobs Act (TCJA) in 2017, the U.S. federal government operated on a worldwide tax system, taxing all income of companies that had nexus with the U.S., offset by credits for taxes paid to other jurisdictions. In practice, the old system's reach was also

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[3] O.R.S. §§ 317.710(5), 317.715(1)–(3).

[4] O.R.S. § 317.625.

[5] For an analysis of the difference between separate accounting and formulary apportionment, see Michael P. Devereux and Simon Loretz, "The Effects of EU Formula Apportionment on Corporate Tax Revenues," *Fiscal Studies* 29: 1-33 (2008), https://doi.org/10.1111/j.1475-5890.2008.00067.x.

substantially narrowed by deferral, as businesses earning income through foreign subsidiaries did not owe U.S. tax unless or until the income was repatriated to the U.S. parent as a dividend.[6]

Since 2017, the U.S. has operated on a largely territorial system like the rest of the world, only taxing U.S.-source income, combined with a one-time tax on deferred foreign income, which was "deemed" repatriated. This new regime includes several guardrails to protect against international profit shifting, like the Global Intangible Low-Taxed Income (GILTI) tax and the Base Erosion and Anti-Abuse Tax (BEAT). More recently, GILTI was superseded by a replacement tax on Net CFC-Tested Income (NCTI). These taxes are meant to undercut the benefit of profit shifting to lower-tax countries, imposing U.S. tax liability to the extent that little tax is paid on income earned abroad.[7,8]

Historically, states have largely avoided taxing international income, but since the enactment of the TCJA, some states have incorporated GILTI, and now NCTI, at the state level, and a few, like Oregon, have also contemplated extending combined reporting to foreign corporations. But these provisions do not work well at the state level, and in particular, state implementation of NCTI lacks key federal provisions, turning what is essentially a minimum tax at the federal level into a tax on the state's apportioned share of all international income at the state level.

How Corporate Tax Changes Increase Prices

Historically, states typically apportioned based on a combination of sales, payroll, and property in the state, which gave businesses an incentive to locate facilities and hire staff in lower-tax states. Placing operations in states with high corporate rates exposed a larger share of corporate profits to those high rates. Most states, including Oregon, eliminated the payroll and property factors precisely for this reason, so that any given state's corporate income tax rate no longer affects its operational location decisions. The only way that a company can reduce liability under Oregon's corporate income tax is by reducing sales into the state, which lawmakers conclude that businesses would not be willing to do.[9]

From this, some lawmakers have drawn the conclusion that state corporate income tax rates do not matter, and that there are no economic consequences when states increase tax burdens, including through policies that newly subject international income to state-level corporate taxation. This is

[6] Certain classes of income, chiefly those subject to what are called Subpart F rules, were taxed regardless of repatriation.

[7] Alan Cole, "The Impact of GILTI, FDII, and BEAT," Tax Foundation, Jan. 31, 2024, https://taxfoundation.org/research/all/federal/impact-gilti-fdii-beat/.

[8] Jared Walczak, "State Implications of the GILTI to NCTI Conversion," Tax Foundation, July 9, 2025, https://taxfoundation.org/blog/big-beautiful-bill-gilti-ncti-state-implications/.

[9] David Brunori and Joseph J. Cordes, "The State Corporate Income Tax: Recent Trends for a Troubled Tax," George Washington University, Sept. 2005, https://www.researchgate.net/publication/228771383_The_State_Corporate_Income_Tax_Recent_Trends_for_a_Troubled_Tax.

incorrect. Under single sales factor apportionment, the tax burden no longer falls directly on the deployment of capital or on the labor force. It falls on sales, and it functions like a tariff.[10]

Under formulary apportionment, the corporate income tax does not really tax net income. Rather, it taxes the apportionment factors located in the state. If payroll is in the formula, the tax is partly a tax on in-state labor. If property is included, the tax partly falls on in-state capital. And when sales are in the formula, that portion of the tax—all of the tax in a state like Oregon, with single sales factor apportionment—becomes a tax on in-state consumption. Income sets the rate at which the factors are taxed, but in Oregon, the base is sales.[11]

If taxes on international activity sufficiently increase a company's Oregon tax, they may be motivated to reduce their footprint in Oregon, since sales into the state may become uneconomical. This is particularly true for brick-and-mortar operations deciding where to locate physical stores. The result is reduced profitability for businesses with a physical footprint in Oregon, and lower employment within those businesses.

For sales made into Oregon regardless, these taxes have the potential to increase consumer prices. Consumers may not make the connection between higher prices or reduced consumer choice and obscure international income policies that drive up corporate tax effective rates, but they will be on the hook for much of the increase should these measures be adopted.

Online retailers already adjust prices based on factors such as the cost of selling in different markets. When Oregon increases the cost of selling into the state, prices of goods and services purchased online are likely to rise. Brick-and-mortar stores setting prices will factor these costs into their sale as well. Even if the product sold has no connection to international commerce, merely selling in Oregon expands the portion of international activity that Oregon is entitled to tax.

Implications of Worldwide Combined Reporting

Every state with combined reporting currently uses water's edge combined reporting or at least allows taxpayers to make a water's edge election, meaning that only U.S. businesses are included in the unitary group for tax purposes, not those located abroad (beyond the water's edge). Some in Oregon and elsewhere have proposed expanding combined reporting regimes to encompass all worldwide related entities. Oregon Senate Bill 419 of 2025 would have adopted mandatory worldwide reporting, and an

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[10] Charles E. McLure, Jr., "State Corporate Income Tax: Lamb in Wolves' Clothing?" U.S. Department of the Treasury, Office of Tax Analysis Paper 25, April 1977, https://home.treasury.gov/system/files/131/WP-25.pdf. See also Sanjay Gupta and Mary Ann Hoffman, "The Effect of State Income Tax Apportionment and Tax Incentives on New Capital Expenditures," *Journal of the American Taxation Association* 25: 1–25 (2003), https://doi.org/10.2308/jata.2003.25.s-1.1; and Austan Goolsbee and Edward L. Maydew, "Coveting Thy Neighbor's Manufacturing: The Dilemma of State Income Apportionment," NBER Working Paper 6614, https://www.nber.org/papers/w6614.

[11] Id.

Oregon policy organization has championed the idea, presenting it as an anti-tax avoidance measure. But worldwide combined reporting taxes ordinary activity abroad, not tax avoidance.[12][13]

Mandatory worldwide combined reporting does more than just extend the unitary group beyond national borders. It overlays two incompatible systems of taxation: the U.S. formulary apportionment system that apportions income to Oregon based on sales into the state, and foreign separate accounting systems that allocate income where it is earned, and which avoid double taxation through credits. A foreign company's profits, already fully taxed by the countries in which they were earned, would be combined into Oregon's return and apportioned by formula, without any credits for taxes paid abroad.

For instance, if one subsidiary of an international grocery enterprise has stores in Oregon, worldwide combined reporting could potentially require that subsidiary to work with every foreign affiliate of its parent company—the legally separate foreign chains located elsewhere chains in other countries—to report on all their business activity, and to apportion tax to Oregon on all of it, even though these foreign chains do not sell into Oregon markets.

The U.S.-based subsidiary is not shifting profits to other supermarket chains abroad; those chains' profits are clearly derived in their own countries. But under worldwide combined reporting, a grocery store chain in Oregon could be required to somehow get international chains to turn over all their internal accounting so that the U.S.-based chain can pay tax on a base that includes related entities' revenues in many other countries.

This would not necessarily increase the domestic supermarket chain's liability in Oregon. Already, Oregon only taxes a small share of the U.S. company's profits, based on Oregon's share of their sales nationwide. Adding foreign companies to the unitary group would dilute Oregon sales much further, since none of the foreign companies have any sales into Oregon. The company would owe tax on a much smaller share of a much larger base.

If foreign supermarket chains have larger profit margins than the domestic chain, this would increase the U.S. company's tax liability, even though it doesn't have access to any of those foreign profits. If the foreign companies have smaller profit margins, then the domestic chain's tax burden would decrease. In both cases, the change has nothing to do with the U.S. company itself—and it adds massive complexity for both the taxpayer and Oregon tax administrators, while requiring the U.S.-based company to secure the tax compliance cooperation of foreign companies that have no direct legal obligation to Oregon.

Arguments for mandatory worldwide combined reporting often rest on the mistaken notion that affiliated companies with foreign income must be doing something nefarious to avoid U.S. tax. This view is far too U.S.-centric, essentially assuming that no real economic activity is carried out elsewhere,

[12] S.B. 419, 83d Leg. Assemb., Reg. Sess. (Or. 2025).

[13] Daniel Hauser, "Worldwide Combined Reporting: How Oregon Can Make It Hard for Corporations to Profit from Offshore Tax Avoidance," Oregon Center for Public Policy, Mar. 24, 2025, https://www.ocpp.org/2025/03/24/worldwide-combined-reporting-corporate-tax-avoidance/.

and that the primary reason that companies generate profits outside the U.S. is profit shifting, as if companies don't have actual operations, with both profits and losses, abroad. Supermarkets in Spain or Poland are not tax avoidance mechanism for a U.S.-based chain; they are businesses that sells groceries to European shoppers.

Proponents of worldwide combined reporting often refer to the income of foreign companies that share a parent with a U.S. company as if they are the result of hiding U.S. profits abroad to reduce tax burdens. In reality, the vast majority of foreign profits of foreign companies are simply the proceeds of doing business elsewhere.

Supporters of worldwide combined reporting also tend to present what are called "related-party transactions" as illegitimate and treat them as tax-avoidance activity. In fact, companies must make payments to affiliates in the ordinary course of business. The federal Internal Revenue Service (IRS) and foreign revenue agencies enforce rules on transfer pricing to ensure that payments across related entities represent the actual value of the transfer rather than serving as a vehicle for profit shifting. Most large multinational companies are subject to automatic in-house IRS audits, with IRS officers embedded in the company to monitor compliance.

New federal policies like BEAT and NCTI, moreover, take away much of the potential benefit of profit-shifting activity. Much of the issue worldwide combined reporting is intended to solve already has more effective federal solutions, meaning that the actual imposition would mostly be on ordinary business activity abroad.

Worldwide combined reporting creates extraordinary complexity and high compliance costs. Whether every foreign affiliate is unitary with the Oregon business is a subjective determination that generates tax controversy and, in some cases, litigation. The U.S.-based company with a taxable connection (nexus) with Oregon would be required to submit documentation for each foreign entity, on which state revenue officials could make determinations on functional integration, centralized management, flow of value, and economies of scale. Not all foreign affiliates may be able to supply the necessary information, and even if they have it, the documentation may not be in English.

For some industries, like major retailers (online and brick-and-mortar), worldwide combined reporting is likely to reduce Oregon revenues, since they typically post lower profit margins abroad. For others, like the automotive industry, worldwide combination could increase revenues. The direction will vary by industry and corporation. Only complexity remains a constant.

Some multinational companies, particularly those with U.S. parent corporations, find worldwide combined reporting workable, and may even opt into it in states that let companies elect whether to use water's edge or worldwide combination. For others, compliance is virtually impossible. This was the experience of many companies during a few states' prior experience with worldwide combined reporting, when tax liability was frequently determined through "reasonable approximations" and particularly through negotiations between the taxpayer and the revenue agency, rather than from a calculation based on reliable revenue and net income data. The Supreme Court ruled that tolerance of approximation was necessary to sustain the tax.[14][15]

Oregon was among the states that once experimented with worldwide combined reporting. States abandoned it in response to a massive backlash from America's trading partners, which included substantial retaliation. The United Kingdom raised effective tax rates on any company with a qualifying presence in a state with worldwide combined reporting. Of particular salience to Oregon, major Japanese companies balked at the tax provision, unwilling to move forward with Oregon investments while it persisted. A federal working group endorsed water's edge, a recommendation echoed by the National Conference of State Legislatures (NCSL), the Multistate Tax Commission (MTC), and the precursor organization to the Federation of Tax Administrators (FTA).[16]

Oregon repealed its law in 1984. With repeal, Oregon again became attractive to foreign investment, including from Japanese firms like NEC, Epson America, Fujitsu America, and Fujitsu Microelectronics, and from a German firm that subsequently built what was then the world's largest silicon factory in Portland.[17]

Compliance barriers were central to the collapse of worldwide combined reporting in the 1980s. If Oregon adopted worldwide combined reporting, hundreds of entities associated with each large multinational corporation would have to convert their records into a standard that aligns with U.S. federal taxable income, which involves reconciling different depreciation standards and divergent treatment of leases, inventories, pensions, reserves, related-party transactions, and more. A U.S. parent company already maintains much of this information and reports on its controlled foreign corporations, but foreign multinationals do not maintain U.S.-aligned books for each of their affiliated entities.

Foreign affiliates' books are kept in dozens of currencies, and exchange rate fluctuations would yield substantial variations in reported foreign income. Foreign affiliates are likely to maintain their books based on local accounting rules that differ from U.S. GAAP accounting, requiring conversion. The records needed to reconstruct foreign affiliates' income for U.S. tax purposes, moreover, may be protected by foreign privacy laws, trade secret protections, or restrictions associated with government contracts and partial state ownership. Federal income tax treaties generally exclude foreign parent companies from tax obligations outside of their income that is effectively connected to the U.S., moreover, meaning that Oregon would need to administer these provisions on its own without any ability to draft off the federal Internal Revenue Service, with staff proficient in foreign languages, foreign accounting standards, foreign currencies, and foreign business laws. Transferring personnel-linked financial data from a European subsidiary of a European parent company to a U.S.-based

[14] U.S. General Accounting Office, "Tax Policy and Administration: California Taxes on Multinational Corporations and Related Federal Issues," July 1995, http://w.unclefed.com/GAOReports/ggd95-171.pdf.

[15] *Barclays Bank PLC v. Franchise Tax Board of California*, 512 U.S. 298 (1994).

[16] Worldwide Unitary Taxation Working Group, "Final Report: Chairman's Report and Supplemental Views," U.S. Department of the Treasury, August 1984.

[17] Nicholas D. Kristof, "Investment in Oregon Spurred by Tax Repeal," The New York Times, Dec. 17, 1984, https://www.nytimes.com/1984/12/17/business/investment-in-oregon-spurred-by-tax-repeal.html.

subsidiary of that same foreign parent may, for instance, implicate the European Union's General Data Protection Regulation (GPDR). A company with Oregon nexus may be legally or practically unable to obtain the records required to comply with worldwide combined reporting.[18]

Proponents cite "reasonable approximation" as a solution to these problems, but it involves replacing real figures with unsourced or poorly sourced estimates provided by the taxpayer, which revenue agencies could accept, reject, or (typically) negotiate. It is not a calculation of tax liability, but the replacement of calculations with negotiations. A federal Government Accounting Office review of California's experience with worldwide combined reporting found that the definition of the unitary group was also a major source of controversy. Cases involved years of litigation just to determine which foreign companies were properly included in the group.[19]

Today, the international tax landscape is even more complicated, with a thicker web of treaty obligations and new federal provisions that already combat the activities worldwide combination was intended to address. Although worldwide combined reporting is not unconstitutional on its own, its constitutionality rests on the willingness of states to set aside formal rules and instead work based on approximations—a system that was highly unsatisfactory the first time around.

For companies facing higher tax liability due to mandatory worldwide combined reporting raises revenue, moreover, it functions like a tariff. The policy discourages foreign companies from selling or operating in Oregon. If any of their subsidiaries establish nexus in Oregon, they subject themselves to worldwide combined reporting, and the larger their share of Oregon sales, the greater their liability.

This disincentivizes establishing business operations in Oregon and encourages avoidance activities like routing sales through third-party distributers or limiting overall sales into the state. For remaining sales into Oregon, some of the incidence is borne by business owners and investors, but much of it is passed along to consumers through higher prices. Just as federal tariff policy has raised prices on U.S. consumers in recent years, this tax, which is scaled based on foreign sales into Oregon, would raise prices on Oregon consumers.

Consequences of Taxing GILTI and NCTI

Until a decade ago, the federal corporate income tax applied to the worldwide income of U.S. corporations and their subsidiaries, including controlled foreign corporations (CFCs) based abroad. To avoid double taxation, these companies were permitted to take credits against their U.S. liability for foreign taxes paid.

[18] The foreign affiliates of U.S.-based multinationals are also included under NCTI, which imposes significant compliance costs, but because the parent company is subject to U.S. tax rules, it does not present the intense and sometimes insuperable barrier created when these obligations are posed on the affiliates of foreign parent companies.

[19] UU.S. General Accounting Office, "Tax Policy and Administration: California Taxes on Multinational Corporations and Related Federal Issues."

With the shift to a territorial system under the TCJA, Congress imposed a tax on "supernormal" returns abroad, defined as profits above 10 percent of the value of a CFC's tangible assets. The rationale was that profits above that threshold could be indicative of royalty income from intangibles (e.g., patents, trademarks, and copyrights), though this was always a rough proxy. This initial 10 percent foreign return was untaxed under a Qualified Business Asset Investment (QBAI) exclusion, while any remaining net income was subject to GILTI.[20]

The GILTI regime offered a 50 percent deduction and an offset worth 80 percent of foreign taxes paid, yielding a rate far lower than the rate on U.S. income. The goal was to tax CFCs' income to the extent that they were "undertaxed" abroad, which could suggest tax avoidance rather than genuine economic activity. Some states, including Oregon, conformed to the tax on GILTI. However, states' tax codes were not designed to cover international income. As a result, they only partially incorporated the provisions, distorting the tax base and imposing a far more punitive tax than the one envisioned by Congress. What was already a problem became much worse with the enactment of H.R. 1 (the One Big Beautiful Bill Act), which replaced GILTI with the new tax on Net CFC-Tested Income (NCTI).

At the federal level, the new tax functions like a minimum tax, imposing compensatory tax on income that is only minimally taxed abroad. Instead of using GILTI's 10 percent QBAI exclusion as a proxy for "normal" returns (above which are "supernormal returns"), NCTI's base begins with all income of a U.S. parent company's foreign subsidiaries (CFCs). They can then claim tax credits for 90 percent of the foreign taxes paid by those subsidiaries and apply a 40 percent deduction to what remains. Against a 21 percent corporate income tax, this yields a minimum tax of 14 percent. (In practice, due to several other adjustments, the floor is closer to 15 percent.) Essentially, U.S. tax applies to the difference between foreign tax paid and about 15 percent.

States, however, do not offer foreign tax credits, meaning that state-level NCTI taxation applies to an apportioned share of all income of foreign subsidiaries, regardless of where the income was generated or how much foreign tax was paid on it. What functions as a minimum tax at the federal level turns into an aggressive state tax on U.S. companies' foreign subsidiary income. It is not a guardrail against profit shifting; the mere existence of the federal tax already addresses that by making profit-shifting activity substantially less attractive or beneficial. Instead, at the state level, NCTI is primarily an Oregon tax on the foreign production and sales of foreign companies simply because their U.S. parent company has nexus with Oregon.[21]

The inversion of federal policy does not end there. It is bad enough that foreign taxes do not reduce state tax burdens on that same income. It is even worse that Oregon actually taxes companies on the amount they paid in tax abroad.

The foreign taxes in question are paid by foreign CFCs, but NCTI (and GILTI before it) is imposed on the U.S. parent corporation. To make the math work, if the U.S. parent is provided a credit for

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[20] Martin A. Sullivan, "Economic Analysis: A New GILTI Spreadsheet for Policy and Planning," Tax Analysts, July 29, 2019, https://www.taxnotes.com/featured-analysis/economic-analysis-new-gilti-spreadsheet-policy-and-planning/2019/07/26/29s4v.

[21] Jared Walczak, "State Implications of the GILTI to NCTI Conversion."

taxes paid abroad by its subsidiaries, then the amount paid in tax must be included in its NCTI income to avoid a double benefit. The 90 percent of foreign tax payments credited against U.S. tax liability are included in the U.S. parent company's income under a provision called the § 78 "gross-up," after which the credit is applied.

Since Oregon and other states do not offer foreign tax credits, this means their tax base includes foreign tax payments. The federal base is the difference between foreign tax payments and about 15 percent. Oregon's base is an apportioned share of all foreign subsidiary income, reduced by a state deduction for 80 percent foreign dividends received, plus those companies' foreign tax payments, which do not benefit from that deduction.

Imagine a U.S.-based corporation with $10 million in Oregon apportioned profits. Assume that it has $1 billion in domestic sales, posts a ten percent profit margin ($100 million in nationwide profits), and has ten percent of its gross sales revenue in Oregon, yielding apportionment of $10 million in profits to Oregon for corporate income tax purposes. Its foreign subsidiaries, meanwhile, generate the same amounts abroad: $1 billion in foreign sales with a 10 percent profit margin, with no sales into Oregon or any other U.S. location. The foreign subsidiaries pay an effective tax rate of 25 percent of their earnings to foreign countries.

Without NCTI, Oregon would tax 10 percent of the company's U.S. profits, since Oregon is the destination of 10 percent of the company's sales. Oregon's corporate income tax (6.6 percent for the first $1 million in profits and 7.6 percent above $1 million) is applied to $10 million in profits, yielding $750,000 in Oregon tax liability.

At the federal level, NCTI would not increase this company's tax liability, because its 25 percent foreign effective tax rate is well above NCTI's minimums. The calculation looks like this:

FEDERAL NCTI CALCULATION

1. The foreign corporation's pre-tax foreign profit of $100 million is reduced by the $25 million paid in foreign taxes to yield $75 million in "tested income," which means income net of foreign tax.
2. Because foreign taxes will be credited against the U.S. parent, 90 percent of the value of foreign taxes paid is added back under the §78 gross-up, yielding $97.5 million in gross NCTI inclusion.
3. NCTI's reduced effective rate is obtained through a 40 percent §250 deduction, yielding $58.5 million of net NCTI.
4. At the 21 percent federal corporate income tax rate, this generates about $12.29 million in additional tax liability before applying foreign tax credits.
5. The 90 percent credit for the $25 million in foreign taxes paid yields up to $22.5 million in credits, considerably more than pre-credit liability, so the U.S. company does not owe any NCTI.

In Oregon, by contrast, the amount paid in foreign tax increases state-level tax liability. This inverts the purpose of NCTI, which is to discourage profit-shifting to low-tax countries. Oregon's conformity to NCTI does the opposite, imposing higher tax burdens on companies with foreign subsidiaries with greater foreign tax burdens. Here's how the calculation would conclude in Oregon:

OREGON NCTI CALCULATION

1. Oregon begins with the federal calculation of net NCTI, which is $58.5 million, and apportions 10 percent of that amount to itself ($5.85 million), based on the company having 10 percent of its U.S. sales into Oregon.
2. The 40 percent deduction is then added back (disallowed), increasing the Oregon NCTI base to $9.75 million.
3. Oregon's 80 percent dividends received deduction (DRD) reduces taxable income of tested income (an initial apportioned $7.5 million becomes $1.5 million post-deduction) but does not apply to the $2.25 million apportioned share of the gross-up for 90 percent of foreign tax payments, yielding a post-deduction Oregon base of $3.75 million.
4. The state's 7.6 percent tax is applied to this base, yielding $285,000 in additional liability.

Not only do foreign tax payments not reduce or eliminate Oregon's NCTI tax burden, but they increase it to the point that, in this example, 60 percent of the company's Oregon tax bill is imposed on the foreign tax bill itself. If somehow the company's foreign subsidiaries had a zero percent effective foreign tax rate, their Oregon tax bill would be $152,000 rather than $285,000. The additional $285,000 in tax liability increases Oregon's effective rate on $10 million of Oregon-apportioned profits from 7.5 percent to 10.35 percent.

Oregon law provides for apportionment of NCTI. Historically, however, the Oregon Department of Revenue has adopted an aggressive posture toward controlled foreign corporation (CFC) income. In *Oracle Corp. & Subsidiaries v. Department of Revenue*, the Department argued that dividends, as well as certain profits from CFCs called Subpart F income, should be excluded from the sales factor. The Oregon Tax Court rejected the state's categorical approach and required factor relief, but permitted a company-by-company inquiry into the activities producing income to determine what foreign earnings, if any, should be included.[22][23]

Similarly, when the federal government required one-time deemed repatriation of foreign earnings under Section 965 as part of the Tax Cuts and Jobs Act, the Oregon Department of Revenue required taxpayers to exclude this deemed repatriation amount from the sales factor. The Oregon Tax Court again rejected the Department's aggressive position, but the ruling only yielded partial factor relief. A similar posture toward NCTI would make Oregon's tax even more uncompetitive.[24]

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[22] O.R.S. § 317.267(3).

[23] *Oracle Corp. & Subsidiaries v. Department of Revenue*, 24 OTR 359 (2021).

[24] *Microsoft Corp. v. Department of Revenue*, 25 OTR 699 (2025).

To explain what this means, suppose that the U.S. parent company originally exclusively had Oregon sales ($100 million gross) and then expanded into the rest of the country, with an additional $900 million in sales elsewhere. Whether Oregon taxes 100 percent of the original Oregon-only $100 million or 10 percent of the $1 billion in national activity through factor apportionment, the tax base is the same. But in the absence factor relief, the same could not be said under NCTI.

Without factor relief, Oregon would apportion its share of NCTI based on the in-state share of domestic sales, but additional sales abroad would not be permitted to dilute Oregon's sales factor. If Oregon has $100 million worth of sales of the $1 billion in domestic revenue, and the tax code now includes an additional $1 billion in foreign revenue (none of which derives from Oregon, by definition), then Oregon's apportionable share should drop from 10 percent to 5 percent. Without factor relief, it would not.

Oregon's existing system is already aggressive, but some in the policy community have suggested reducing Oregon's dividends received deduction from 80 percent to 50 percent or lower to increase NCTI taxation. Applied to the above example, the tax on NCTI would increase to $370,500, and the effective tax rate would increase to 11.21 percent. Those advocating for this policy characterize the DRD as making Oregon's tax regime less aggressive than the federal one, but this is inaccurate. Even setting aside the question of whether such a tax makes sense at the federal level, Oregon and other NCTI-taxing states consistently levy high tax burdens on companies that do not owe any federal NCTI at all.[25]

The DRD is not a subsidy. It is designed to limit the degree to which multiple layers of corporate income tax are imposed on the same earnings passed through a chain of corporations as dividend income. Reducing the DRD increases double taxation for both U.S. and international commerce, expanding the degree to which Oregon taxes activity with no meaningful connection to the state. Meanwhile, if lawmakers only reduced the deduction for NCTI and not for domestic companies' dividends, this would almost certainly violate the U.S. Constitution. States are not permitted to adopt policies that discriminate against foreign commerce, and they cannot create a structure that disallows deductions for the purpose of taxing income beyond its jurisdiction.[26][27]

Such proposals have also included a recommendation that Oregon decouple from a federal deduction that reduces the effective tax rate for U.S. businesses exporting goods and services abroad. The deduction for Foreign-Derived Deduction Eligible Income (FDDEI) is intended as a complement to NCTI. Whereas NCTI increases tax liability for companies that serve foreign markets through CFCs (to the extent that they have low tax burdens abroad), GDDEI reduces tax liability for companies that serve foreign markets directly from the U.S.

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25 Daniel Hauser, "Oregon Must Prioritize Working Families Over Corporations that Hide Profits Overseas. Here's a Great First Step," Oregon Center for Public Policy, Nov. 12, 2025, https://www.ocpp.org/2025/11/12/corporations-profits-overseas-tax/.

26 *Kraft Gen. Foods, Inc. v. Iowa Dept. of Revenue and Finance*, 505 U.S. 71 (1992).

27 *Hunt-Wesson, Inc. v. Franchise Tax Board of California*, 528 U.S. 458 (2000).

Some states decouple from the FDDEI deduction, but only four states include NCTI in the tax base while denying the FDDEI deduction. At the federal level, GILTI and FDII (and their NCTI and FDDEI successors) were created as a carrot and stick, and are intended to operate in tandem. Oregon cannot easily have it both ways, insisting that sales factor apportionment renders the small FDDEI deduction unnecessary while dismissing its relevance for the much larger tax on NCTI, which imposes additional tax based on sales outside Oregon. Those interested in increasing the tax burden on domestic producers do not demonstrate any interest in addressing the additional tax burden created by NCTI, and propose a state-level foreign policy regime that is at cross-purposes with federal policy.[28]

Conclusion

Oregon already taxes international income. Proposals to expand the tax base to capture a broader range of international income with little or no connection to Oregon would make the state a marked outlier. The result would be reduced tax competitiveness, higher compliance and administrative costs, and higher prices.

Multinational business taxation is complex, and it is understandable that policymakers look at dividend deductions or water's edge rules and worry that the tax code is failing to reach something it ought to capture. But in fact, Oregon's tax code also taxes international income in a way that no state did between states' abandonment of worldwide combined reporting in the 1980s and the adoption of the TCJA in 2017.

Further expanding the international tax regime to cover income with no meaningful connection to Oregon would enhance complexity, expose the state to litigation, and ultimately raise revenue on the back of Oregonians, not foreign companies. These proposals would function like tariffs on sales into Oregon by any company that shares a corporate parent with these foreign companies. And just like conventional tariffs, a foreign company might write the check, but Oregon consumers would foot much of the bill.

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[28] Author's research based on state statutes. The states are Illinois, Maine, Minnesota, and Vermont, plus the District of Columbia.