Taxation committee votes to pass tax haven bill, increasing taxes on manufacturers that export overseas


The Maine State Chamber testified against the bill last week. As amended, the bill would strip out the Foreign Derived Intangible Income (FDII) deduction. This would result in an income tax increase on Maine’s manufacturers that export outside the United States. FDII is one of two provisions enacted by Congress in the Tax Cuts and Jobs Act legislation from 2017. The act was intended to update the nation’s tax policies to make the taxation system competitive with the rest of the world and to also incentivize companies to make investments within the United States. Among its most notable provisions, intended to make the United States a competitive place for investment, was the alignment of the U.S. corporate tax rate with the average tax rate of the world’s 30 largest economies.

Less noted by the public due its complexity, but equally important, were provisions within the law that intended to increase incentives for U.S. investment. These provisions utilized a “carrot and a stick” approach and are referred to as FDII (Foreign Derived Intangible Income) and GILTI (Global Intangible Low Taxed Income). They are intended by the legislation to work hand-in-glove with one another, and both have to do with the income that is generated on sales to customers located outside the United States.

FDII – the carrot – benefits companies located in the United States where income is recognized on their U.S. tax return that is the resultant of a non-U.S. sale. The greater the income that is subject to U.S. taxation, the greater the FDII benefit. And because more income is recognized in the U.S., if manufacturing and R&D occurs within the U.S., the provision encourages U.S. investment in these activities.

GILTI – the stick – harms companies that make that same international sale, if they recognize that income outside the U.S. Prior to this tax reform, this income would not have been taxable in the U.S., unless the cash portion of those profits were actually repatriated to the U.S., which practically rarely happened. With GILTI, the U.S. imposes immediate taxation on those international profits, which are generated by having the manufacturing and R&D occur outside the U.S., regardless of whether the income is repatriated.

Because these two calculations and

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2020 Human Resource Issues Update

Wednesday, February 26, 2020
8:30 Refreshments | Program 9:00 to 11:00 a.m.
Bangor Savings Bank Conference Facility
(5 Senator Way, Augusta)

As a small business owner and an employer, you may have legal responsibilities under the federal employment anti-discrimination laws enforced by the United States Equal Employment Opportunity Commission (EEOC) and Maine Human Rights Commission (MHRC). This workshop is designed with the intent to educate small businesses and help owners and managers focus on running a successful business by maintaining a strong EEO policy. Whether you are dealing with a complaint filed with the EEOC/MHRC or a lawsuit filed by the EEOC/MHRC, the results can be a drain to your mental and financial resources. Studies show that complaints of employment discrimination have been known to lead to moral issues at the workplace and negatively impact creativity and productivity. This workshop will cover relevant topics and business owners are encouraged to come with questions about their internal EEO policy. We are presenting this in three sections:

• Amy Sneirson of the Maine Human Rights Commission will lead off with a review of the changes in the Maine Human Rights Act that went into effect recently.
• Following that, Elizabeth Marcus of the U.S. Equal Employment Opportunity Commission will present on the EEOC’s mediation program.
• Elizabeth will then be joined by Feng (Ken) An, also of the U.S. Equal Employment Opportunity Commission, to do an interactive presentation on retaliation issues.
• A question & answers session will round out our time together.

Register today!

Online registration is available at www.mainechamber.org/hcr. Questions can be directed to Angela Arno, director of programs and events by calling (207) 623-4568, ext. 104, or by emailing aarno@mainechamber.org.

Labor committee hears “Ban the Box” proposal, which would bar employers from asking about criminal convictions on job applications

In a public hearing on Wednesday, February 19, 2020, the Joint Standing Committee on Labor and Housing held a public hearing on LD 2087, An Act Relating to Fair Chance in Employment,” sponsored by Rep. Rachel Talbot Ross (D-Portland). More than a dozen states have enacted similar laws – the purpose of which is to encourage the hiring of people with a criminal record. Rep. Talbot Ross has had similar, but more disconcerting proposals in past sessions. This year, she took a more pragmatic approach, limiting her bill just to prohibiting employers from asking about a prospective employee’s previous criminal convictions on any written or electronic job application.

As drafted, LD 2087 does allow an employer to ask such questions during the job interview and to conduct criminal background checks. In addition, it does not make people with a previous criminal history a protected class for the purposes of hiring and does allow an employer to decline to hire the individual for that or any reason, other than those already prohibited under Maine and federal law.

The idea behind the proposal is to give good workers who have rehabilitated themselves and are willing and able to work a chance to get into the interview process without being disqualified just because of their criminal history. Many Maine employers today are already hiring applicants with a previous criminal history, in part because of the acute workforce shortage and in part because they are willing to take a chance on someone who is working to rebuild their lives for the better. In many cases, our members indicated that these hires have worked out for the better for both parties. Supporters of

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provisions have closely intertwined policy goals, both were included as part of the federal provision, and according to the Council on State Taxation (COST), the majority of states who have adopted GILTI adopted FDII.

LD 403 as amended now heads to the Maine House of Representatives for debate. Please contact your legislators and urge them to “vote no” on LD 403. If you have any questions, please contact Linda Caprara by calling (207) 623-4568, ext. 106, or by emailing lcaprara@mainechamber.org.

the proposal indicated that, if a prospective hire can at least get through the door, they have the chance to sell themselves and become an asset to the business.

The bill does provide exemptions for employers who operate under any federal or state law or regulation or rule that creates a mandatory or presumptive disqualification based on any conviction, for instance the banking or financial industry and the health care industry.

The Maine State Chamber testified “neither for nor against” at the public hearing for this bill. Our policy committee members did not have an issue dropping the question from any job application – as long as they were able to ask the question during an interview, could conduct a criminal background check, and the final decision of hiring any employee remained in the hands of the employer, allowing them to be the best judge of whether a prospective employee, with a criminal past or not, was the best fit for their workplace.

The proposal was by no means a perfect bill, and there remain problems with some of the provisions in the language. The committee is aware of these problems – thanks to the Maine State Chamber’s testimony – and will attempt to address them in an upcoming work session. For questions or additional information, please contact Peter Gore by calling (207) 623-4568, ext. 107, or by emailing pgore@mainechamber.org.

On Tuesday, February 11, the Joint Standing Committee on Taxation tabled LD 2011, An Act to Update Certain Provisions in the Income Tax and Service Provider Tax Laws, a department bill sponsored by Rep. Ryan Tipping (D-Orono). Linda Caprara testified on behalf of the Maine State Chamber in opposition to the bill the week before because it would impose a new tax on users of streaming services transferred for less than permanent use.

Currently, the State imposes a sales-and-use tax on digital products transferred electronically for permanent download. Digital services that are just streamed for temporary use are not currently subject to sale and use tax. This bill would codify different treatment for these two types of transactions: one would be subject to 5.5% sales tax; while the other would be subject to 6% service provider tax. In addition, as drafted, it is not clear on whom that tax falls.

The Maine State Chamber testified that, in the event the committee decides to go forward with the legislation, the bill should be amended to provide a clear definition of the term “digital audio visual” and “digital audio services.” By adding the definition, it would clarify that the tax applies only once to the “end user,” not to additional service provider contractual relationships along the way. At Tuesday’s work session, Maine Revenue Services said they did not object to the amendment. Without this clarification, the bill would provide a lack of transparency of the tax base and result in multiple layers of tax. Again, the amendment would clarify that the tax applies once and would prevent so-called double taxation of the same service.

The next work session on LD 2011 has not yet been scheduled. If you have any questions, please contact Linda Caprara by calling (207) 623-4568, ext. 106, or by emailing lcaprara@mainechamber.org.

Governor Janet Mills announced this week that Maine, along with Massachusetts and Rhode Island, is spearheading an effort to phase down the use of hydrofluorocarbons (HFCs), a potent greenhouse gas and a driver of climate change. These synthetic gases are most often used as a refrigerant in appliances and are known as “climate super-pollutants,” with hundreds to thousands of times the heat-trapping power of carbon dioxide. Governor Mills submitted legislation that directs the Maine Department of Environmental Protection to limit the use HFCs where safer alternatives are available. Massachusetts and Rhode Island announced their intention to begin rulemaking to accomplish the same.

HFCs are the fastest growing source of greenhouse gas emissions both nationally and globally, and if left unchecked, could double within 20 years. Just one pound of R-404A, an HFC refrigerant used in supermarkets, has the same climate impact over 100 years as almost two tons of CO₂.

The legislation proposed by Governor Mills, An Act to Restrict the Use of Hydrofluorocarbons, directs the Department of Environmental Protection to do rulemaking that establishes a reasonable and orderly transition to products and equipment that use climate-friendly alternative to HFCs, where alternatives are available, and sets a time-table for that transition, beginning in 2021. The expected rules will be consistent with those being developed by Massachusetts and Rhode Island, as well as other United States Climate Alliance states.

Governor Mills’ bipartisan bill was sponsored by Representative Ralph Tucker (D-Brunswick), Chairman of the Environment and Natural Resources Committee, and co-sponsored by a bipartisan coalition of lawmakers in the Maine House and Senate, including Senator Robert Foley (R-York), the Republican Senate lead on the Legislature’s Joint Committee on Environment and Natural Resources.
Secretary of State speaks on issues that could confuse primary voters

It will be the first time in 20 years that Maine Democrats and Republicans will vote in a presidential primary instead of a caucus, called Super Tuesday. Twelve candidates will appear on the Democratic ballot, including several who have already ended their campaigns. At polling places on election day, the names of those who have withdrawn from the election will be posted, and votes for them will be counted as blanks. On the Republican ballot, President Trump is the only candidate.

In Maine, Secretary of State Matt Dunlap oversees elections. Earlier in the week Secretary Dunlap acknowledged that some voters might be surprised to discover that the primary ballot does not use ranked-choice voting. When the ranked-choice voting referendum was adopted by the voters in 2016, it didn’t include the presidential races. It was only state and federal races. The legislature had to take separate action to include the presidential primary and the general election in ranked-choice voting. When they did so, they adopted ranked-choice voting for the presidential primary and for the presidential general election. Governor Janet Mills allowed it to become law without her signature, and the technical outcome of that was that it doesn’t take effect until 90 days after the adjournment of the current legislative session. Therefore, Maine won’t use it for the March 3 primary, because there is actually a pending People’s Veto application. There is a group circulating petitions to stop this — if that effort is not successful, then Maine would see it for the November election.

Any eligible voter can vote in the primary in this election cycle. However, there are a couple elements to consider. If you are a registered Republican, and you wanted to vote in the Democratic primary, it’s too late because there’s a 15-day blackout period. If you’re an unenrolled voter or you’re not registered to vote, you can register, enroll on primary day, and vote in one of the primaries.

Legislature hears State of the National Guard speech from Major General Douglas Farnham

On Tuesday, February 18, Major General Douglas Farnham used his annual state of the National Guard speech to lawmakers to praise past and current members of the Guard and its predecessor, the Maine Militia. Farnham spoke highly of several current Guard members who have contributed to the state and nation, including Master Sergeant Rick Martell of the Air Guard, who volunteered past his 60th birthday to continue to serve on air refueling tankers. Farnham pointed out that Joshua Chamberlain was not only a civil war hero but also led the Maine militia to respond to state problems. Also of note, 11 percent of Mainers have served in the military, one of the highest percentages in the nation.

For the most current information, visit www.mainechamber.org
2020 Business Day at the Statehouse

Thursday, March 12 | 8:00 am to Noon | Hall of Flags, Second Floor, Maine Statehouse, Augusta

Employers and employees welcome ... PLEASE JOIN US!

You are invited to the Maine State Chamber of Commerce’s annual Business Day at the Statehouse on Thursday, March 12, 2020, from 8:00 a.m. to 12:00 p.m. in the Hall of Flags (Statehouse, Second Floor).

Business Day at the Statehouse provides a prime opportunity for our members, and their employees, to discuss business issues and priorities with legislators and state government officials, as we work together to strengthen Maine’s economy and keep Maine competitive. Participants have the unique opportunity to connect face-to-face with legislators. Employers often use this time to emphasize the importance of preserving and retaining existing jobs, strengthening Maine’s economy through the creation of new opportunities, and keeping Maine businesses competitive in today’s economy.

With your participation, the “Voice of Maine Business” will resonate throughout Augusta! We anticipate another great turnout this year! If you have additional questions, please register online at www.mainechamber.org or email aarno@mainechamber.org.

LEGISLATIVE
STRICKLY
SOCIAL

Tuesday, March 31, 2020
5:00 to 7:00 p.m.
Senator Inn & Spa, Augusta

• Light hors d’oeuvres and cash bar •
Please register online at www.mainechamber.org.
Questions? Please email aarno@mainechamber.org.
Digest of New Legislation of Interest

Maine Chamber staff has studied each of these recently printed bills to assess potential impact on business trends. If you have concerns regarding any bill, please communicate those concerns to a member of our advocacy department by calling (207) 623-4568 or visit www.mainechamber.org.

A total of 95 business-related bills have been tracked to date since the session began on January 8, 2020!

WORKFORCE DEVELOPMENT

LD 2109, An Act To Implement the Recommendations of the Commission To Study Long-term Care Workforce Issues. (Rep. Hymanson, D-York) Joint Standing Committee on Health and Human Services. This bill implements the recommendations of the Commission To Study Long-term Care Workforce Issues, which was established by Public Law 2019, chapter 343, Part BBBBB, section 1. The bill does the following.

1 It requires direct care workers across the long-term care spectrum to be paid no less than 125% of the minimum wage. It requires the Department of Health and Human Services to adopt rules that take into account the cost of this increased wage in its reimbursement rates.

2 It requires the Department of Health and Human Services to adopt rules to increase reimbursement rates under Chapter 101: MaineCare Benefits Manual and any state-funded programs to take into account costs of providing care and services in conformity with applicable state and federal laws, rules, regulations, training requirements and quality and safety standards, including, but not limited to, increases in the minimum wage, earned paid leave, electronic visit verification, background checks and other costs that are not provided for in the current reimbursement rates.

3 It establishes a long-term care workforce oversight advisory committee to collect and compile data related to workforce shortages and services provided to clients, review progress by the Department of Health and Human Services regarding recommendations provided to the department and the joint standing committee of the Legislature having jurisdiction over health and human services matters, including the recommendations of the Commission To Study Long-term Care Workforce Issues, identify barriers to implementing recommendations and make recommendations on proposals to address long-term care workforce shortages. The oversight committee must submit an annual report to the joint standing committee of the Legislature having jurisdiction over health and human services matters.

For the most current information, visit www.mainechamber.org