

## **New Hampshire and Vermont Business Tax Update**

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Several tax-related issues were vetted before the New Hampshire and Vermont legislatures this past session. In particular, both states grappled with whether to conform to the sweeping federal income tax changes enacted by Congress from H.R. 1 on July 4, 2025, otherwise known as the One Big Beautiful Bill Act (“OBBBA”). This update focuses solely on each state’s adoption or non-adoption of the key business income tax changes from OBBBA, as well as several nuances to each state’s income tax code that make both states stand out for multistate businesses. Note that at the time of this update, Vermont has enacted these legislative changes whereas the New Hampshire legislative changes are awaiting the Governor’s signature.

### **Highlights of Key OBBBA Provisions for Businesses**

In 2025, OBBBA resulted in several significant business income tax changes to the Internal Revenue Code (“IRC”), including domestic tax base changes for businesses in areas such as domestic research and experimental deductions (new IRC § 174A), business interest expense deductions (IRC 163(j)), bonus depreciation for qualified property and qualified production property (IRC § 168(k) and new IRC § 168(n)), and depreciable business asset expensing (IRC § 179). While not all provisions were favorable to business, adoption of these domestic tax changes would result in an overall net reduction to both states’ revenues. OBBBA also made significant changes to the taxation of foreign source income (“FSI”), which deserves special attention in both New Hampshire and Vermont given their unique taxation of FSI in a separately apportioned foreign tax base. The primary issue heading into the 2026 legislative session was whether each state was going to conform to any or all of these OBBBA changes, and if so, how and when. This article focuses only on the more material changes impacting multistate businesses.

### **Conformity 101: Each State’s Relationship with the Internal Revenue Code**

Before specifically addressing OBBBA conformity, it is important to understand how each state generally conforms (or not) to the Internal Revenue Code.

New Hampshire is unique in that it imposes an entity-level income tax, the Business Profits Tax (“BPT”), on all “business organizations,” including corporations, passthroughs entities such as S corporations, partnerships and limited liability companies, and entities that are disregarded for federal income tax purposes.<sup>1</sup> In this respect, New Hampshire substantially deviates from the IRC.

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<sup>1</sup> See RSA 77-A:1, I and 77-A:2. It is important to note that New Hampshire also imposes an entity-level value-added tax on every business organization called the Business Enterprise Tax (“BET”). While each business

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However, for purposes of computing the income tax base of each type of organization, the BPT is generally derived from federal taxable income (or its equivalent) as its starting point.<sup>2</sup> The BPT has historically adopted the IRC as of a specific date - referred to as “static conformity” (or “fixed-date conformity”). Heading into this legislative session, New Hampshire’s BPT base started with federal taxable income as would be determinable under the IRC in effect on December 31, 2018.<sup>3</sup> As a result, none of the OBBBA changes enacted into the IRC in 2025 would flow through to the BPT base absent the legislature either updating its conformity statute or adopting specific OBBBA provisions in the modifications to its tax base.

Unlike New Hampshire, Vermont has a more common business income tax structure that imposes its corporate income tax only on C corporations (and those electing to be taxed as corporations for federal income tax purposes) (the “CIT”).<sup>4</sup> Vermont’s CIT technically has a static conformity system in that its starting point is linked to the IRC as of a specific date, but in practice, the legislature annually adopts the IRC as of the prior year, as applied to the prior year.<sup>5</sup> For example, heading into this legislative session, Vermont conformed to the IRC in effect on December 31, 2024 for tax years beginning on or after January 1, 2024. As a result, none of the OBBBA changes from 2025 would flow through to the Vermont CIT base absent the legislature enacting its annual link-up or by adopting specific OBBBA provisions in the modifications to its tax base.

### Where Did New Hampshire and Vermont Land?

To cut to the punchline, the New Hampshire legislature chose not to conform to OBBBA, instead remaining in the 2018 IRC world. By contrast, Vermont did conform its tax base to OBBBA but enacted several modifications deviating from specific OBBBA provisions. Highlights of these key changes to the domestic and foreign tax base are discussed below.

#### *Domestic Tax Base*

With surprisingly little debate, the New Hampshire legislature chose not to conform to these (mostly) business-friendly OBBBA changes, instead staying with the TCJA changes in effect in the IRC on December 31, 2018, but for existing modifications.<sup>6</sup> Failed legislation included HB 1597, which proposed to increase the IRC § 179 expense deduction cap, and HB 1668, which

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organization is liable for both the BPT and the BET, a BET credit is permitted against the BPT. This update focuses solely on the BPT.

<sup>2</sup> See RSA 77-A:1, III (“gross business profits” is the tax base when organizations file separately and is defined for each type of organization); RSA 77-A:1, XIII and 77-A:6, IV (“combined net income” is the tax base for a unitary combined group and is imposed on the group’s combined net income as though it were that of “one business organization”); and RSA 77-A:1, XX (identifying the adopted versions of the IRC by year).

<sup>3</sup> RSA 77-A:1, XX.

<sup>4</sup> 32 V.S.A. §§ 5811(15); 5832.

<sup>5</sup> 32 V.S.A. § 5824.

<sup>6</sup> See, e.g., RSA 77-A:3-b modifications to the IRC § 179 expensing, IRC § 168k) bonus depreciation, and RSA 77-A:3, XII for the IRC § 170 charitable contribution deduction.

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included a provision for rolling conformity to the IRC. As a result, businesses operating in New Hampshire will have to continue to reconcile all items back to the 2018 IRC in an ever-growing list of modifications to the Business Profits Tax Return, including tracking state-level depreciation and amortization. Separate from OBBBA conformity issues, note that the New Hampshire legislature did pass some smaller business-friendly changes by increasing the BET filing threshold in HB 155 (from a gross business receipts and enterprise value tax base of \$250,000 to \$400,000) and increasing the by-entity and aggregate research and development tax credit caps in HB 1102 (from \$7 MM to \$10 MM in the aggregate and from \$50,000 to \$100,000 by entity). Again, these bills are still pending with the Governor's office at the time of this article.

In contrast to New Hampshire, the Vermont legislature engaged in a lengthy discourse on conformity to OBBBA and its revenue impact to the state, resulting in the passage and enactment of H.B. 933, the miscellaneous tax bill. For tax years beginning on or after January 1, 2025, Vermont conforms to OBBBA for its starting point<sup>7</sup> but then modifies the tax base to deny: (1) the new IRC § 174A R&E expense deduction for large businesses (those not qualifying as “eligible taxpayers” under the gross receipts test of IRC § 448(c)) and (2) the new IRC § 168(n) expense rule for qualified property.<sup>8</sup> In addition, for tax years beginning on or after January 1, 2026, Vermont requires an add-back for OBBBA's IRC § 1202 qualified small business stock exclusion. Separate from OBBBA, H. 933 also increased the R&D credit from 27% of the federal amount to 75%, effective for tax years beginning on and after January 1, 2027. Failed Vermont legislation included several proposed income tax increases for business and individuals, including increased taxes on owners of pass-through entities. For full details of the Vermont changes, including transition rules and amended return instructions, practitioners should refer to the federal conformity supplement recently posted on the Department's website.

### *Foreign Tax Base*

The other potentially significant impact in both states relates to OBBBA's changes to the foreign tax base. In 2017, the Tax Cuts and Jobs Act (“TCJA”) generally shifted the taxation of FSI earned by U.S. multinational corporations from a deferral basis (when dividends were repatriated to the U.S.) to taxing a portion of FSI a current basis (deemed income), incorporating GILTI (global intangible low-taxed income) and FDII (foreign-derived intangible income).

OBBBA enacted several significant changes to the taxation of FSI, including but not limited to, shifting from GILTI to NCTI (Net CFC Tested Income), shifting from FDII to FDDEI (foreign-derived deduction eligible income), reducing the IRC § 250 deduction, eliminating the qualified business asset investment (QBAI) deduction, and other changes to the rules relating to CFCs. These changes are effective for tax years beginning after December 31, 2025. If adopted, these

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<sup>7</sup> Vermont conforms to the IRC as in effect on December 31, 2025, effective for tax years starting on or after January 1, 2025. See Sec. 60, H. 933 (amending 32 VSA § 5824).

<sup>8</sup> Vermont already decoupled from IRC § 168(k) bonus depreciation prior to OBBBA and continues to do so.

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changes are anticipated to increase the FSI tax base at the state level. Key issues heading into this legislative session were whether and to what extent each state taxes the FSI base, how it taxes FSI, and whether it adopts the I.R.C. § 250 deduction, in whole or in part.<sup>9</sup>

*Pre-OBBBA*

New Hampshire and Vermont are unique in their taxation of FSI. Both states carve out FSI from the domestic tax base, including Subpart F and GILTI, and treat such income as foreign dividends subject to a modified apportionment formula that incorporates foreign sales into the denominator.<sup>10</sup> While the implementation by both states of foreign factor relief should be applauded in an effort to constitutionally reflect a reasonable sense of how the FSI is generated – a nod to *Container Corp.*<sup>11</sup> - in practice, doing so has not always met the mark, often leading to materially distortive results for multinationals with very little presence in either state (particularly with using only a single sales factor).

Furthermore, prior to OBBBA, both states' statutes incorporated the IRC § 250 deduction as an offset. However, in practice, the New Hampshire Department of Revenue Administration has chosen to tax 100% of GILTI, namely, taxing both: (1) the GILTI inclusion less the IRC § 250 deduction (which is consistent with Vermont's pre-OBBBA approach); and (2) the portion of GILTI subject to the IRC § 250 deduction when the cash is actually paid back to the U.S. shareholder (which Vermont and most other states did not tax pre-OBBBA). It is important to note that a plain reading of the New Hampshire statutes does not authorize 100% taxation of GILTI and this has caused much confusion and disagreement in the business community. At the end of the day, this means that New Hampshire was not only taxing more FSI than the federal government, but that it became one of the most burdensome states in the country in the taxation of FSI.

*Post-OBBBA*

In this past legislative session, New Hampshire's decision not to conform to OBBBA and its FSI amendments means that New Hampshire will continue to tax GILTI as a foreign dividend under the IRC of 2018 unless the legislature acts to address this in the 2027 session, effective for 2026, which is the first year the regime shift occurs. New Hampshire's non-conformity to the FSI sections of OBBBA are projected to result in lower taxes for many multinationals (and a corresponding reduction to state revenue). Despite this anticipated tax benefit, these same non-

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<sup>9</sup> For a concise summary of the OBBBA changes on FSI, refer to Karl Frieden and Marilyn Wethekam's discussion by Andrea Muse, "Should States Fear the OBBBA?," *State Tax Notes*, Vol. 117 (Aug. 11, 2025).

<sup>10</sup> New Hampshire began taxing GILTI in tax periods beginning on or after January 1, 2020 when it conformed to the IRC in effect on December 31, 2018. Vermont began taxing GILTI for tax years beginning after December 31, 2017 when it conformed to the changes from TCJA. Both states implement single sales factor for both the domestic apportionment formula and the foreign apportionment formula (New Hampshire for tax periods on or after December 31, 2022, and Vermont for tax periods beginning on or after January 1, 2023).

<sup>11</sup> See *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 169-170 (1983).

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conformity actions will create an administrative quagmire for both business and the Department by requiring multinationals to track the former GILTI and FDII for New Hampshire purposes that will no longer exist on the federal level after 2025 because they have been replaced by the new NCTI and FDDEI regime. In addition, it is likely that additional OBBBA provisions impacting the taxation of FSI at the federal level will not be easy to untangle when computing a pre-OBBBA New Hampshire foreign tax base.

By contrast, for tax years beginning on or after January 1, 2026, Vermont has conformed to the new NCTI and FDDEI provisions of OBBBA, taxing them as foreign dividends. Vermont will continue to tax GILTI as a foreign dividend for tax year 2025 as it conforms to the federal effective date. This 2026 change is projected to result in higher taxes for many multinationals (and a projected corresponding increase in state revenues) but without the compliance headache created by its neighbor to the east. The more significant change in Vermont, however, is H. 933's denial of the IRC § 250 deduction in its entirety, effective for tax years beginning on or after January 1, 2025. This means that Vermont now taxes 100% of GILTI (in 2025) and NCTI (in 2026 forward). While relief will be obtained by including 100% of GILTI/NCTI in the foreign factor denominator apportioning the FSI base, this nonetheless puts both Vermont and New Hampshire officially on the map for taxing a significant amount of FSI as compared to other states. Businesses should be mindful of these changes that may require an amended 2025 return.

### Take-Aways for Business

State revenue systems are measured on many metrics, including business-friendly climate, revenue stability and ease of administration. As comparatively small states, New Hampshire and Vermont are not often on the tax radar for many multistate businesses. Nonetheless, New Hampshire's entity-level taxation of passthrough entities and separate foreign tax base have always created compliance complexities with potentially distortive results. With its continued lagging conformity and non-adoption of OBBBA, as well as its denial of the IRC § 250 deduction (in practice), New Hampshire just got more complicated and less business-friendly. Vermont's traditional approach and annual link-up to the IRC certainly present an easier administrative climate for businesses and the Department. In addition, Vermont adopted many business-friendly aspects of OBBBA, particularly for smaller businesses, and rejected several proposals that would have increased taxes on many business owners. Regardless, the challenging path ahead for Vermont's tax policy is how to balance the need for short-term revenue to support education finance and other local funding needs with the equally important need to attract and retain larger businesses and employers in the state for long-term economic growth.

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