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Summary

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In a meeting on Friday, a task force commissioned to study the effects of the 2017 Tax Cuts and Jobs Act (115 P.L. 97) on Alabama's corporate tax also focused on issues including the tax treatment of bonus depreciation, like-kind exchanges, amortization and apportionment, the task force co-chairs told Law360.

While the group was originally formed only to evaluate corporate tax matters, the broader effects of the federal tax overhaul and issues of competitiveness with other state tax codes expanded the scope of the task force's discussions, according to Rep. Danny Garrett, R-Trussville, a co-chair.

“It's become a little bit more comprehensive,” Garrett said in a phone call Tuesday. “Alabama has a very regressive tax structure.”

The task force is looking into cutting the corporate income tax rate to compensate for the decreased state deduction for federal income taxes resulting from the federal reduction in the corporate rate. Garrett and his fellow co-chair, Sen. Dan Roberts, R-Mountain Brook, said the state was discussing cuts for individual

and corporate income tax rates to return a “windfall” of revenue from TCJA changes back to taxpayers.

“We specifically don't want this to be just a corporate tax cut,” Garrett said.

Garrett cited an analysis by EY, included in a report published by the Council on State Taxation, that estimated Alabama's corporate tax base would increase by 11% by 2027 because of the TCJA.

Roberts said the task force was also discussing the elimination of the full state deduction for federal income taxes, saying that most states had restricted or repealed similar deductions and that the elimination of the deduction, paired with a corporate tax cut, would boost Alabama's competitiveness.

Among the other proposals under consideration are replacing the current apportionment formula — which uses property, payroll and sales factors — with a single sales factor, and targeted incentives, such as research and development tax credits.

Darien Shanske, tax professor at the University of California, Davis School of Law, said that single sales factor apportionment is a more reasonable way to boost the state's competitiveness than targeted incentives, such as R&D credits, that have limited evidence to support their effectiveness. He noted that while the single sales factor was more difficult to work around, it probably would not make a significant difference in the state's corporate competitiveness.

“It is unlikely to be a very effective tool,” Shanske said. “In practice, big taxpayers have come up with ways to locate their sales in convenient states notwithstanding.”

As for the proposal to decouple from GILTI, Bruce Ely, a partner at Bradley Arant Boult Cummings LLP who serves as an informal adviser to the task force, said decoupling solves a potential constitutional issue for the state. Alabama is one of a handful of states that haven't fully decoupled from GILTI, and it does not offer a full dividends-received deduction.

GILTI, a provision of the TCJA, was meant to target income earned from intangible assets — such as patents or other intellectual property — in jurisdictions with low tax rates.

Alabama's current arrangement could result in disparate treatment of foreign and domestic subsidiaries of companies that separately report profits of each subsidiary, a disparity that the U.S. Supreme Court has previously ruled violates the Constitution's foreign commerce clause requiring the same treatment of foreign and domestic income.

“I think it's a lawsuit waiting to happen,” Ely told Law360.

Shanske said such disparate tax treatment was vulnerable to challenge, adding that full conformity, rather than decoupling, would increase revenue to the state.

“GILTI is a provision put in the federal tax law by Republican congressmen concerned about income being shifted out of the domestic corporate tax base,” Shanske said. “There's no reason for Alabama not to protect its own corporate tax base.”

The task force will continue to solicit comment from local business alliances, chambers of commerce and legislative budget chairs, Garrett said, before the deadline to propose its conclusions and recommendations to the Legislature in early February.

Once drafted into legislation, the task force's proposals would likely face significant hurdles before becoming law. Some recommendations, like income tax rate changes, would require a voter-approved state constitutional amendment, and Garrett said the task of explaining complex tax changes that could reduce revenue for the state's education trust fund would be a challenge.

“Politically, when you're trying to reduce funding for education, that's a tough sell,” Garrett said. “It's a heavy lift; it's a complicated issue.”

The task force's work builds on previous efforts to address Alabama's conformity to federal tax code changes. In May, the state enacted legislation decoupling the financial institution excise tax from the [Internal Revenue Code Section 162\(r\)](#) ([IRC § 162\(r\)](#)) deduction limitation on Federal Deposit Insurance Corp. premiums, from GILTI treatment and from the limit on interest deductions for tax years beginning after Dec. 31.

While the bill decoupled from the federal treatment of GILTI and the disallowed interest deduction, the state Department of Revenue said those IRC sections don't apply to the excise tax but do apply to the corporate income tax code.

--Additional reporting by Paul Williams, Natalie Olivo, Maria Koklanaris and Daniel Tay. Editing by John Oudens.