



# **NCSL Task Force on State and Local Taxation Meeting May 10, 2021**

## **Federal Tax Reform under the Biden Administration and Its Implications for State Taxation**

**Presenter: Karl Frieden, Council On State Taxation**



# Significant Federal Tax Reform 1986 – 2021

- **Tax Reform Act of 1986**
  - Revenue neutral
- **Tax Cuts and Jobs Act of 2017**
  - \$1.5 trillion PIT and CIT tax cut over 10 years
  - Shift from a worldwide/deferral system towards a territorial system
  - Base broadening – e.g., interest expense limitation
- **The Coronavirus Aid, Relief, and Economic Security Act of 2020**
  - Part of \$6 trillion of federal pandemic relief and stimulus over a several year period
  - NOL limitation and carryback changes; Interest expense limitation changes
- **The Made in America Tax Plan of 2021 (Proposed)**
  - \$1.8 trillion corporate income tax increase over 10 years
  - Overhauls GILTI and establishes a minimum Book Tax
- **The American Families Plan of 2021 (Proposed)**
  - \$1.5 trillion personal income tax increase over 10 years
  - Tax increases on ordinary income and capital gains for high income households

## **Biden Administration’s “The Made in America Tax Plan”**

- In April 2021, the Biden administration made public “The Made in America Tax Plan” to raise corporate income taxes by about \$1.8 trillion over 10 years to pay for its “American Jobs Plan” related to infrastructure and other spending programs

### **The key proposed CIT provisions are:**

- Raise the corporate income tax rate to 28 percent
- Raise the GILTI tax rate to 21 percent
  - Expand the GILTI tax base by eliminating QBAI and calculating GILTI based on a country-by-country basis
- Enact a 15 percent minimum tax on book income of large companies
- Replace BEAT with SHIELD
- Repeal FDII and replace it with expanded R & D investment incentives
- Tighten anti-inversion rules
- Eliminate tax preferences for fossil fuels; provide incentives for clean energy production
- Increase funding and ramp up corporate tax audit enforcement

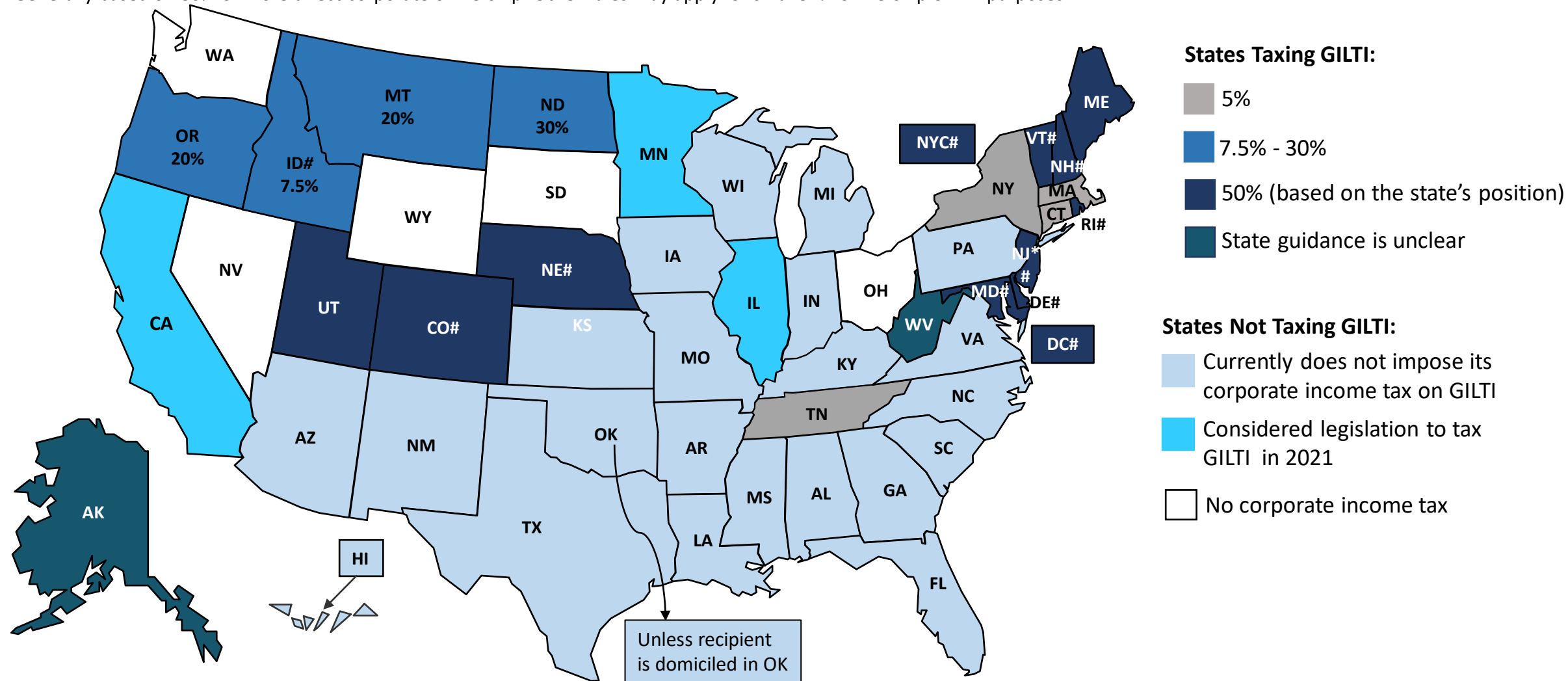
# Federal Taxation of GILTI: The TCJA Provision Compared to Biden's Proposal

	Timing of Tax	Rate	Tax Base Determination	Calculation Method	Foreign Tax Credit	Net Operating Loss Carryover Equivalent
TCJA (GILTI)	Current	10.5%/13.125%	Allows QBAI deduction	Aggregate	80%	None
Biden Proposal (GILTI)	Current	21%	No deduction	Country-by-Country	Unknown*	Not clear

\*Likely 80% or 100%

# GILTI: State Corporate Income Tax Conformity in 2021

Generally based on 80% or more direct corporate ownership. Other rules may apply for smaller % ownership or PIT purposes.



# CO, DC, DE, ID, MD, NE, NJ, NH, NYC, RI, VT allow Sec. 250 deduction

*Disclaimer:* This map is based on the best available information, but several states do not have clear guidance on GILTI. Therefore, this information should be used for general guidance and not relied upon for compliance.

Source: Council On State Taxation (COST)

# Biden Administration's "The American Families Plan"

In late April 2021, the Biden administration made public "The American Families Plan" to raise federal personal income tax and other non-corporate income taxes by about \$1.5 trillion to pay for investments in education, childcare, preschool, paid leave and child tax credits

## The key proposed PIT and other provisions are:

- Increase top personal income tax rate for households with income over \$400,000 to 39.6% (43.4% with the Medicare tax)
- Tax capital gains on households making over \$1 million at ordinary income tax rates
- Eliminate the step-up basis on unrealized capital gains at death worth over \$1 million
- End capital gain treatment for carried interests
- Provide extended child tax credit and refundable earned income tax credit (and other credits) on a permanent basis
- Not included: elimination of the SALT \$10,000 deduction limit
- No repeal of the cap on Social Security taxes
- Increase funding and ramp up high-income household audit enforcement