

Vermont Tax Structure Commission

May 29, 2019

Update on Legal Issues Related to Business Taxation¹

- ❖ Joyce vs. Finnegan
 - Joyce now considered outdated
 - Tax Dept. has been reviewing with the change would entail but expects a shift to Finnegan within a year or two (“it’s on the to-do list”)
 - Tax hasn’t seen much litigation on Joyce rule

- ❖ Nexus challenges to nonresident taxation
 - Vermont has seen no litigation on this issue
 - Biggest problem administratively is with multi-tiered structures
 - Implementation of VTax has led to process improvements, e.g., a delay in sending out bills

- ❖ Appeals/court cases regarding state taxation of repatriated income
 - Too early to see any cases (DoT is unaware of any filed to date)
 - Tax on GILTI (global intangible low-taxed income) is very hot topic
 - Congress created GILTI as a new category of income in part to address profit shifting, which makes it U.S. income
 - Focus on businesses that have no real business activity overseas
 - Questions regarding factor relief and modified apportionment are still in beginning stages
 - DoT considers Vermont less vulnerable to challenge because we’re a unitary combined state
 - MTC considering model legislation on the subject

¹ Information provided is from phone call with Will Baker, General Counsel for Vermont Department of Taxes, on May 16, 2019