

Footnotes

1 *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 192 (1983).

2 “The European Commission believes that the only systematic way to address the underlying tax obstacles which exist for companies operating in more than one Member State in the Internal Market is to provide companies with a consolidated corporate tax base for their EU-wide activities. Targeted solutions have many merits and would go some way towards remedying the tax obstacles. However, even if all of them were implemented, they would not address the fundamental problem of dealing with up to 27 different tax systems.” Available at http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm (last visited March 3, 2010).

3 *The Delineation and Apportionment of an EU Consolidated Tax Base for Multi-jurisdictional Corporate Income Taxation: a Review of Issues and Options*, Working Paper No. 9/2006, available at http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_09_complete_en.pdf (last visited March 3, 2010).

4 As explained in more detail later in this testimony, in apportioning the income of multistate unitary corporations, some states use the apportionment formula set forth in the Uniform Division of Income for Tax Purposes Act (UDITPA), which requires a corporation to “separate its income into business income which is subject to apportionment among the various States, and non-business income, which is allocated to a single State.” Sanjay Gupta & Lillian Mills, *How Do Differences in State Corporate Income Tax Systems Affect Compliance Cost Burdens?* (2002). UDITPA divides income into business income, which is apportioned by means of a three-factor formula, and nonbusiness income, which is allocated according to the type of income and the type of property giving rise to the income. Some states have also adopted special allocation rules for certain industries such as pipelines and telecommunications companies.

5 *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 439 (1980).

6 *Connecticut General Life Ins. Co. v. Johnson*, 303 U.S. 77, 80-81 (1938).

7 *Mobil Oil Corp.*, 445 U.S. at 438.

8 *Id.* at 439.

9 *Id.* at 441-42.

10 *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 164-65 (1983).

11 *Pioneer Container Corporation v. Beshears*, 684 P.2d 396, 399 (Kan. 1984).

12 See e.g., *Container Corp.*, *supra*, and *Barclays Bank PLC v. Franchise Tax Board*, 512 U.S. 298 (1994).

13 This approach is often referred to as the *Joyce* rule named for a decision by the California State Board of Equalization. See *Appeal of Joyce, Inc.*, No. 66 SBE 069 (Cal. SBE Nov. 11, 1966).

14 This approach is commonly referred to as the *Finnigan* rule named for another decision by the California State Board of Equalization. See *Appeal of Finnigan Corp.*, No. 88-SBE-022 (Cal. SBE Aug. 25, 1988) (*Finnigan I*); Opinion on Petition for Rehearing, No. 88-SBE-022-A (Cal. SBE, Jan. 24, 1990) (*Finnigan II*).

15 *Barclays Bank PLC, supra.*

16 Joe Huddleston & Shirley Sicilian, *History and Considerations for Combined Reporting: Will States Adopt a Model Combined Reporting Statute?*, available at <http://www.ncleg.net/DocumentSites/committees/revenuelaws/2007-2008/Meeting%20Documents/Meetings%20for%20Report%20to%202009%20Session/19%20November%202008/History%20and%20Considerations%20for%20Combined%20Reporting%20-%20MTC.pdf> (last visited March 3, 2010).

17 “The international business community and foreign governments became concerned, in part because unitary apportionment was not the standard for United States’ or foreign governments’ taxation of international income at the national level. The U.S. Treasury formed a Working Group, with state, federal, and business community representatives. The 20 members of this Working Group included chairs of large corporations (Ford, Exxon, IBM, and others) State legislators (such as the house speakers from Florida and New Hampshire), Governors (from Utah, Illinois, and California) and high level federal staff (including the U.S. Secretary of the Treasury and an Under Secretary of State). Although no agreement was reached, the Working Group Chairman’s Report ultimately recommended States adopt water’s-edge combination that includes only those foreign entities doing business in a tax haven. As a result of the report and the extreme unpopularity of the concept, the States stepped away from worldwide combined reporting.” *Id.* at 15.

18 See e.g., MTC Model Statute for Combined Reporting §§ 5.A.iv & vi (2006).

19 *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 460 (1959).

20 UDITPA was developed by the *National Conference of Commissioners on Uniform State Laws (NCCUSL)* in 1957.

21 *Moorman Mfg. Co. v. Bair*, 437 U.S. 267 (1978).

22 Many other factors also played a role in the shift, including demographics, technology, global competition, and the success of states’ economic development efforts.

23 UDITPA § 17(a).

24 UDITPA § 17(b).

25 ILCS § 5/304(a)(3)(C-5)(iv).

26 The application of these rules can be tricky. For example, what happens when a company sells its goods to customers located in a state that has chosen not to impose a corporate income tax (e.g., Nevada or Wyoming)?

27 See Md. Regs. Code § 03.04.03.08(E)(2).