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## February 2020 Breakdown of State-By-State Gilti Conformity

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# FEBRUARY 2020 BREAKDOWN OF STATE-BY-STATE GILTI CONFORMITY

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📅 February 28, 2020

🏛️ BEAT, GILTI, TCJA

🎓 Bacilio Mendez II

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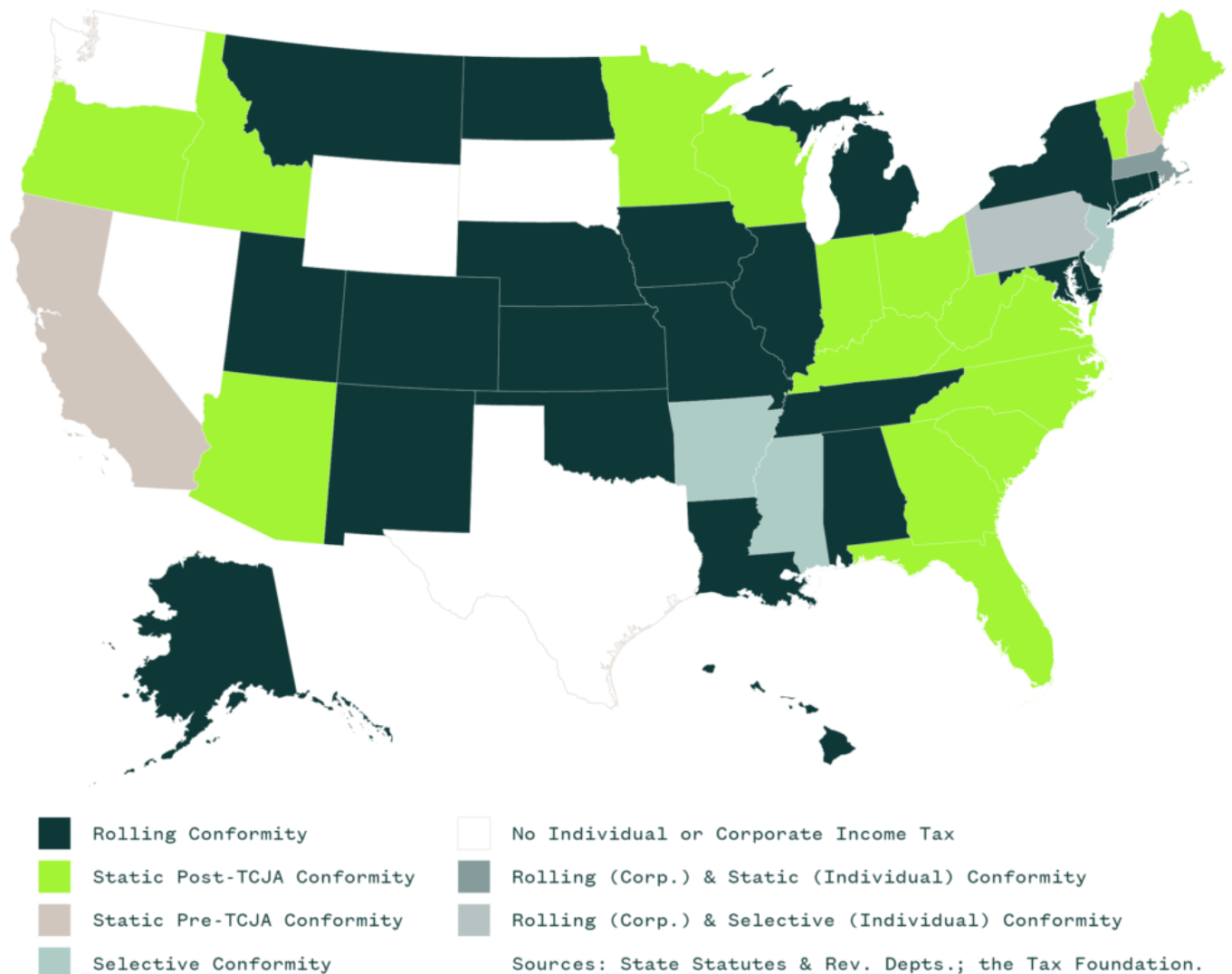


Internal Revenue Code books sit during a House Ways and Means Committee markup hearing in Washington, D.C., U.S., on Monday, Nov. 6, 2017. The House tax-writing committee began debate on the GOP's proposed overhaul, kicking off four frantic days for lobbyists and lawmakers to revise a bill that represents President Donald Trump's final hope for a signature legislative achievement this year. Photographer: Andrew Harrer / Bloomberg ([Source](#)).

# OVERVIEW

It has been two years since the enactment of the **Tax Cuts and Jobs Act (TCJA)** and many states are still wrestling with exactly how they plan to conform to key provisions of the law—particularly those provisions related to **Global Intangible Low-Taxed Income (GILTI)**.

## THE THREE FLAVORS OF CORPORATE & INDIVIDUAL CONFORMITY



*Note: Map current as of January 1, 2020.*

We are a nation of states, each with their own personality and style. Just as Americans differ on any number of issues, state legislatures vary on how they choose to incorporate the federal tax code into their own state systems. Generally speaking, however, there are primarily **three conformity options** available to the states: **rolling**; **static**; and/or **selective**. Thankfully, as their

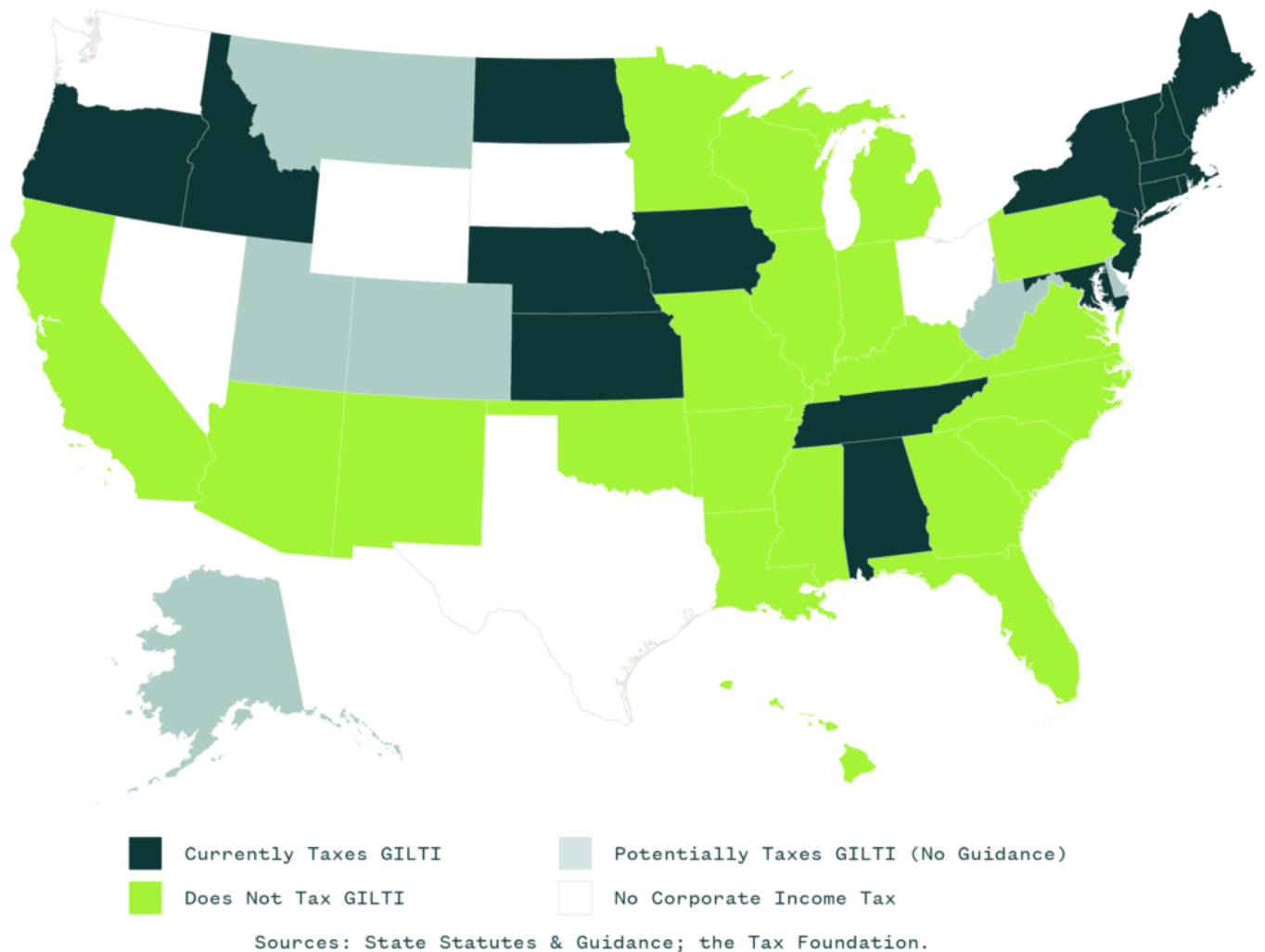
names imply, the options are fairly straight forward; that said, some explanation is still required.

When a state opts for **rolling conformity**, they have essentially chosen the path of least resistance. Unless local legislators are diametrically opposed to a specific provision, then the federal changes, writ large, become that state's law. The changes are thus incorporated as they are enacted at the federal level. To be clear, the "as they are enacted" language is the key to "rolling" conformity; here, "as they are enacted" relates to the timing of, as well as word-by-word, enactment. The states that have bought into rolling conformity are: **AL; AK; CO; CT; DE; IL; IA; KS; LA; MA; MD; MI; MO; MT; NE; NM; NY; ND; OK; PA; RI; TN;** and **UT**. The **District of Columbia** is also a rolling conformity jurisdiction.

**Static conformity** is the next option available to the states (though you may also hear this referred to as "fixed date" conformity). Rather than taking on the federal changes "as they are enacted," as rolling conformity does, static conformity states only adopt the updates to the federal code that stood on a specific (or "fixed") date. For example, if your state chose January 1, 2020, as its conformity date, then any updates to the federal tax code that were enacted on January 2, 2020, and beyond, would not be incorporated into your state's code. For that reason, it may also be helpful to think of this as "snapshot" conformity, because static conformity states' codes are, in both theory and practice, a snapshot of the federal code on a specific date in time. The states that take a static conformity approach are: **AZ; CA; FL; GA; HI; ID; IN; KY; MA; ME; MN; NH; NC; OH; OR; SC; TX; VT; VA; WV;** and **WI**. Be advised that the static dates of these states vary widely and some may even be no tax states.

Lastly, there is **selective conformity**, which simply means that a state legislature has only chosen to enact the federal provisions of their preference. The selective conformity states are: **AR; MS; NJ;** and **PA**.

## HOW EACH STATE TAXES GILTI



*Note: Map current as of January 1, 2020.*

**GILTI** and the **Base Erosion Anti-Abuse Tax (BEAT)** are the two ways in which the **TCJA** brings some portion of international income into the federal tax system of the United States. Currently, no states automatically conform to **BEAT** and none seem in a rush to draft legislation around it. Many states, however, have incorporated **GILTI**.

The purpose of **GILTI** is to discourage profit shifting by parking intangible property in low-tax jurisdictions overseas. Many states conform to the corporate code (before credits or deductions) and bring in **GILTI** under **26 U.S.C. § 951A** (without the 50% deduction or the credits for foreign taxes that may have been paid).

In some states, the application of a **26 U.S.C. § 250** deduction and an 80% dividends received deduction (DRD) eliminates all but 5% of **GILTI**, however, twelve states have issued guidance imposing liability on a share of **GILTI** above the 5% threshold. This makes state taxation of **GILTI**, in several states, much more aggressive than at the federal level.

The following twenty-seven states do not tax **GILTI** or do not have corporate income tax: AZ; AR; CA; FL; GA; HI; IL; IN; KY; LA; MI; MN; MS; MO; NV; NM; NC; OH; OK; PA; SC; SD; TX; VA; WA; WI; AND WY.

The remaining states (and the District of Columbia) currently tax **GILTI** or could potentially tax **GILTI**—the tax rate, or potential tax rate, follows each state abbreviation in a parenthetical: AL (50%); AK (20%); CO (50%); CT (5%); DC (50%); DE (50%); ID (15%); IA (50%); KS (20%); ME (50%); MD (50%); MA (5%); MT (20%); NE (50%); NH (50%); NJ (50%); NY (5%); ND (30%); OR (20%); RI (50%); TN (5%); UT (100%); VT (50%); and WV (50%).

## CONCLUSION

As of February 2020, over two years after its effective date, the international tax provisions of the **TCJA** have not been fully addressed by the several states. It is unclear when the remaining holdouts at the state level will finalize their guidance, but it remains to be seen if businesses in those states, weary of the uncertainty, may move their operations to more favorable jurisdictions. Time will tell.



### Posted by Bacilio Mendez II

Bacilio Mendez II is a fourth year Honors JD/MBA student at the GGU School of Law/Edward S. Ageno School of Business and is proud to be the founding editor of the GGU Tax Review. The former Director of Information and Compliance for Benjamin Madison Wealth Advisors, in 2013, Bacilio was named the National Lawyers Guild (NLG) Legal Worker of the Year and was an NLG 2012 W. Haywood Burns Memorial Fellow for Social & Economic Justice (focusing on data visualization of public information). Prior to law school, Bacilio earned a Master of Library and Information Science from Pratt Institute where he served the Kings County Supreme Court, of the New York State Unified Court System, as the 2010 Nathan R. Sobel Law Library Fellow and was inducted into Beta Phi Mu (the International Library & Information Studies Honor Society). Bacilio also holds a Bachelor of Arts in Modern Dance from Oberlin College and is a member of both the Screen Actors Guild-American Federation of Television and Radio Artists and the Actors' Equity Association.

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