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THE WHITE HOUSE
WASHINGTON

*new file:
unitus transfer*

Date 10.22.85

Suspense Date _____

MEMORANDUM FOR: *John*

FROM: DIANNA G. HOLLAND

ACTION

- ☐ Approved
- ☐ Please handle/review
- ☒ For your information
- ☐ For your recommendation
- ☐ For the files
- ☐ Please see me
- ☐ Please prepare response for
_____ signature
- ☐ As we discussed
- ☐ Return to me for filing

COMMENT

ID # 303 362

CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

OUTGOING

INTERNAL

INCOMING

Date Correspondence
Received (YY/MM/DD) 1 1

Name of Correspondent: D. Chew

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Decision memo re: Unitary Taxation

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CH Hall	ORIGINATOR	85.10.21			1 1
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		1 1			1 1
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		1 1			1 1

ACTION CODES:

A - Appropriate Action
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I - Info Copy Only/No Action Necessary
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Comments:

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THE WHITE HOUSE

WASHINGTON

October 21, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Decision Memo re: Unitary Taxation

This is a very complex and important subject that some of us have worked on for several years. Thus, it is a little perplexing to be asked to deal with the proposal by way of a one hour review of a cover letter and a draft letter.

Within those constraints, this appears to be a valid solution to the long-standing unitary tax clash between the UK and U.S., even though it requires resorting to federal legislation. Also, it is not inconsistent with the U.S. position in any present litigation.

I am assuming that other nations with whom we deal are also threatening retaliatory action, and efforts will be made to negate such action by them as well.

Further, I strongly urge that this "Jim - Nigel" letter somehow establish that our support for the Mathias legislation might be reevaluated if California passes suitable "water's edge" legislation.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 10/21/85 ACTION/CONCURRENCE/COMMENT DUE BY: 4:30 P.M. TODAY

SUBJECT: DECISION MEMO RE UNITARY TAXATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☒	McFARLANE	☒	☐
MILLER	☐	☐	OGLESBY	☒	☐
BUCHANAN	☐	☐	RYAN	☐	☐
CHAVEZ	☐	☐	SPEAKES	☐	☐
CHEW	☐ P	☒ SS	SPRINKEL	☐	☐
DANIELS	☒	☐	SVAHN	☐	☐
FIELDING	☒	☐	THOMAS	☐	☒
FRIEDERSDORF	☒	☐	TUTTLE	☐	☐
HENKEL	☐	☐		☐	☐
HICKEY	☐	☐		☐	☐
HICKS	☐	☐		☐	☐
KINGON	☒	☐		☐	☐

REMARKS:

We plan on forwarding the attached memo to the President this evening.
Please provide any comments by 4:30 p.m. today.

RESPONSE:

David L. Chew
Staff Secretary
Ext. 2702



THE SECRETARY OF THE TREASURY
WASHINGTON

October 21, 1985

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES A. BAKER, III *JAB III*

SUBJECT: Worldwide Unitary Taxation

I believe that the time has now come for the Administration to take positive steps to seek to resolve the problems associated with state use of the worldwide unitary method of taxation. In the attached letter, I am recommending a proposed course of action. I am also attaching a draft letter from me to Chancellor of the Exchequer Nigel Lawson which responds to the concerns of the Government of the United Kingdom on this issue.

Approve _____

Disapprove _____

Attachments



THE SECRETARY OF THE TREASURY
WASHINGTON

October 21, 1985

Dear Mr. President:

I believe that it is now appropriate for the Administration to publicly support federal legislation that would limit the state use of the unitary method of taxation to the "water's edge" for all multinational corporations and would restrict state taxation of dividends received by U.S. corporations from their foreign subsidiaries.

The issues posed by the state use of the worldwide unitary method of taxation are not new. In September 1983, in response to the concerns of foreign governments and the business community, you established a Worldwide Unitary Taxation Working Group. The Group, which was chaired by then-Treasury Secretary Regan, was composed of representatives of state governments, the business community, and the federal government and was "charged with producing recommendations...that will be conducive to harmonious international economic relations, while also respecting the fiscal rights and privileges of the individual states."

At its final meeting on May 1, 1984, the Working Group agreed on three principles that should guide state taxation of the income of multinational corporations:

- Principle 1: Water's edge unitary combination for both U.S.- and foreign-based companies.
- Principle 2: Increased federal administrative assistance and cooperation with the states to promote full taxpayer disclosure and accountability.
- Principle 3: Competitive balance for U.S. multinationals, foreign multinationals, and purely domestic businesses.

The Working Group recommended that principles one and three be implemented on a state-by-state basis without resort to federal legislation. Secretary Regan, in a July 31, 1984 letter transmitting to you his report as Chairman of the Working Group, stressed the need for prompt state action. "If there are not sufficient signs of appreciable progress by the states in this area by July 31 of next year, whether by legislation or administrative action, I will recommend to you that the Administration propose federal legislation that would give effect to a water's edge limitation...."

Since the Working Group issued its recommendations, Colorado, Florida, Indiana, Oregon, and Massachusetts have adopted a "water's edge" limitation, but Alaska. California, Idaho, Montana, New Hampshire, and North Dakota continue to tax on a worldwide unitary basis. Most significantly, the California legislature adjourned in mid-September without passing "water's edge" legislation. Though the California legislature will consider the issue again when it reconvenes in January 1986, a solution is far from certain. Because of its size and economic importance, California is the most pivotal state.

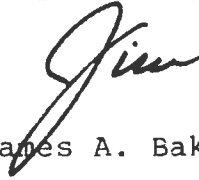
In July of this year, in response to long-standing frustration, the U.K. Parliament unanimously passed anti-unitary retaliatory legislation aimed at U.S. multinationals as part of the 1985 Finance Act. This is enabling legislation that would require additional Parliamentary action to implement. In a recent letter to me urging decisive federal action, Chancellor of the Exchequer Nigel Lawson stated that: "It is clear from the reaction in the U.K. to the news from California that I will be under pressure to invoke the reserve powers (in Section 54 of our Finance Act 1985) when Parliament reassembles at the end of October, unless you have made your announcement about federal action before then."

In view of these developments, I believe that the Administration must now act and announce its support for "water's edge" legislation. Of necessity, this legislation must also curb state taxation of foreign dividends. The Administration does not need to introduce its own legislation. Rather, it can announce its support of legislation already introduced by Senator Mathias. To emphasize our determination, I recommend that the Administration also file briefs in cases pending in federal and state trial courts in opposition to state use of the worldwide unitary method of taxation.

Though Congress may be reluctant to pass such legislation, I believe that Administration support would be welcomed by our foreign trading partners as well as the world business community. I also believe that this action would provide California with additional incentive to adopt suitable "water's edge" legislation to avoid federally-imposed restrictions. The Administration, of course, could reevaluate its support for such legislation if California limits its use of the unitary method on its own accord. In assessing our action, the states should understand that we have been extraordinarily patient in waiting for them to resolve the problem in the two years since the Working Group was formed. To lessen state concerns, we should simultaneously announce our intention to continue to support the federal assistance measures recommended by the Working Group.

If you approve this course of action, I propose to seek assurances from Chancellor Lawson that the United Kingdom will withhold implementing its retaliatory legislation. In particular, I believe that we should ask the Government of the United Kingdom to join the Government of the United States in a joint statement indicating that, in light of the Administration's support for the Mathias legislation, the United Kingdom would not make use of the retaliatory authority in the Finance Bill. I am enclosing a draft letter to Chancellor Lawson which takes that position.

Respectfully,

A handwritten signature in dark ink, appearing to read "Jim", written over the printed name.

James A. Baker, III

The President
The White House
Washington, D.C. 20500

Enclosure

Dear Nigel:

Thank you for your letter of September 26, 1985, in which you urge federal action to resolve the problems associated with worldwide unitary taxation. I am pleased to report that the Administration is prepared to publicly support federal legislation to limit state use of the unitary method to the "water's edge" for all multinational corporations, namely S. 1113, sponsored by Senator Mathias. In addition, we also stand ready to file briefs in appropriate cases challenging state use of the worldwide unitary method of taxation.

As you know, we are very concerned about the anti-unitary retaliatory provision in the 1985 Finance Act. Due to its retroactive feature, some U.S. taxpayers have advised us that it has already prompted them to modify their dividend repatriation practices. In order to be able to reassure our own business community, I would request a statement from your government that, because of the position taken by the U.S. government, the United Kingdom will withhold any exercise of the authority available under the retaliatory legislation and that, should the unitary issue not be resolved in a satisfactory manner, any future

exercise of that authority would have only prospective effect. Perhaps the positions of our two governments could be made clear in a joint statement sometime this week as the U.K. Parliament reconvenes.

I look forward to your response.

Sincerely,

James A. Baker, III

The Right Honorable Nigel Lawson
Chancellor of the Exchequer of the United Kingdom
London

APR

1 1982

ID #

069360 CU

FIOIO

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

COPY
from ORM

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: John Williams☐ MI Mail Report

User Codes: (A) _____

(B) _____

(C) _____

Subject: United States

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>JO K...</u>	ORIGINATOR	<u>82104101</u>		<u>TJ C</u>	<u>82104113</u>
<u>W AT 04</u>	Referral Note: <u>A</u>	<u>82104101</u>			<u>82104113</u>
<u>W FIEL</u>	Referral Note: <u>I</u>	<u>82104113</u>			<u>82104113</u>
	Referral Note: _____	<u>1 1</u>			<u>1 1</u>
	Referral Note: _____	<u>1 1</u>			<u>1 1</u>
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MAR 31 1982

THE WHITE HOUSE

069360 CU

WASHINGTON

March 31, 1982

MEMORANDUM FOR JAMES A. BAKER, III
EDWIN MEESE, III

FROM: RICHARD S. WILLIAMSON

SUBJECT: UNITARY TAX

*RAH -
FFB argues
2*

On March 3, 1982, the Cabinet Council on Economic Affairs determined that the Administration would not take a position on legislation relating to the unitary tax until it had completed further study of the issue and undertaken extensive consultations with interested parties.

Earlier this year, at the request of the Department of the Treasury, the Department of Justice filed an Amicus Curiae brief in the Chicago Bridge and Iron Company Case pending before the U.S. Supreme Court. The Solicitor General's Office petitioned the Supreme Court for an opportunity to make an oral argument in this case. Oral argument has been tentatively approved for April 19, 1982.

As a result of the Cabinet Council decision mentioned above, Assistant Secretary John Chapoton contacted the Solicitor General's Office to suggest they not make an oral argument in the Chicago Bridge and Iron Company Case. Chapoton has not received a response to his request.

White House Intergovernmental Affairs received a substantial number of critical comments from the National Governors' Association, and Republican Governors in particular, at the time the Department of Justice originally filed the Amicus Curiae brief. The Governors argued that it was inconsistent with the President's New Federalism for the Federal government, through the Justice Department, to be arguing against a state's right to impose the unitary tax on corporations doing business within that state.

It is my information the Solicitor General's Office has indicated to Treasury that to withdraw the request for oral argument would be an embarrassment to the Solicitor General's Office. I suggest that to proceed with oral argument, prior to an Administration decision being made by the Cabinet Council on Economic Affairs, will undercut the Administration's credibility both on the unitary tax issue and on the Federalism Initiative. I believe the Solicitor General's Office should be made aware of this situation.

cc: Fred Fielding ✓
Richard G. Darman
Craig L. Fuller

*Advised Jim Medas that SG has not
acted on DOJ request for oral argument.
Nevertheless, the SG will check w/
Stan Morris before proceeding. Stan
will, in turn, check w/ us.*

*RAH
4/13/82*

99TH CONGRESS
1ST SESSION

S. 1113

To amend the Internal Revenue Code of 1954 to clarify the extent to which a State, or political subdivision, may tax certain income from sources outside the United States.

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, APRIL 15), 1985

Mr. MATHIAS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1954 to clarify the extent to which a State, or political subdivision, may tax certain income from sources outside the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 77 of the Internal Revenue Code of 1954
4 (relating to miscellaneous provisions) be amended by adding
5 at the end thereof the following new section:

6 “SEC. 7518. INCOME OF CORPORATIONS ATTRIBUTABLE TO
7 FOREIGN CORPORATIONS.

8 “(a) IN GENERAL.—Where two or more corporations
9 are members of the same affiliated group of corporations—

1 “(1) for purposes of imposing an income tax on
2 any corporation which is a member of such group, no
3 State, or political subdivision thereof, may take into
4 account, or include in income subject to such tax, any
5 amount of income of, or attributable to,

6 “(2) any other corporation which is a member of
7 such group and which is a foreign corporation,
8 unless such amount is includable in the gross income of the
9 corporation described in paragraph (1) for purposes of chapter
10 1 (including any amount includable in gross income under
11 subpart F of part III of subchapter N of chapter 1) for the
12 taxable year in which or with which the taxable period (for
13 purposes of State or local law) ends.

14 “(b) INCOME TAX DEFINED.—For purposes of this sec-
15 tion, the term ‘income tax’ means any tax which is imposed
16 on, according to, or measured by net income.

17 “(c) AFFILIATED GROUP DEFINED.—For purposes of
18 subsection (a), the term ‘affiliated group’ means a common
19 parent corporation and one or more chains of corporations
20 connected through stock ownership with such common parent
21 corporation.

22 “(d) CERTAIN CORPORATIONS TREATED AS FOREIGN
23 CORPORATIONS.—For the purpose of this section, a domes-
24 tic corporation shall be treated as a foreign corporation if
25 under section 861(a)(2)(A) a dividend received from such cor-

1 poration in the taxable year referred to in subsection (a)
2 would not be treated as income from sources within the
3 United States.

4 “(e) CERTAIN DIVIDENDS PAID OR DEEMED PAID.—

5 “(1) DIVIDENDS EXCLUDED FROM TAX.—If a
6 corporation receives in any taxable year a dividend
7 from a foreign corporation (or is by application of sec-
8 tion 951 treated as having received such a dividend), in
9 imposing an income tax on such corporation no State,
10 or political subdivision thereof, may tax, or otherwise
11 take into account—

12 “(A) in the case of a dividend received from
13 a corporation with respect to which an election
14 under section 936 is in effect for the taxable year
15 in which such dividends are paid, the amount of
16 deduction allowed by section 243,

17 “(B) in the case of a dividend received from
18 a corporation described in subsection (d) which is
19 not described in paragraph (A), more than the
20 lesser of—

21 “(i) the amount of the dividend exclu-
22 sive of any amount of dividend determined
23 under paragraph (3), or

24 “(ii) the amount by which the dividend
25 plus any amount of dividend determined

1 under paragraph (3) exceeds the excluded
2 portion of the dividend determined in accord-
3 ance with paragraph (2).

4 “(C) in the case of a dividend received from
5 any other foreign corporation more than the lesser
6 of—

7 “(i) the amount of the dividend (exclu-
8 sive of any amount determined under section
9 78), or

10 “(ii) the amount by which the dividend
11 plus any amount determined under section
12 78 exceeds the excluded portion of the divi-
13 dend determined in accordance with para-
14 graph (2).

15 “(2) EXCLUDED PORTION OF A DIVIDEND.—The
16 excluded portion of any dividend shall be determined
17 by multiplying the amount of the dividend (including
18 any amount of dividend determined under section 78 or
19 paragraph (3)) by a fraction—

20 “(A) the numerator of the fraction shall be
21 the sum of—

22 “(i) the total amount of tax withheld
23 from all such dividends at the source.

24 “(ii) the total amount of tax which by
25 application of section 902 or section 960 to

1 all such dividends, the domestic corporation
2 is deemed to have paid, and

3 “(iii) the total amount of tax deemed
4 paid by application of paragraph (3).

5 “(B) The denominator of the fraction shall be
6 46 percent of all such dividends.

7 “(3) SPECIAL RULE WITH RESPECT TO DIVI-
8 DENDS RECEIVED FROM DOMESTIC CORPORATIONS
9 TREATED AS FOREIGN UNDER SUBSECTION (d).—A
10 corporation that receives a dividend which is described
11 in subparagraph (B) of paragraph (1) shall—

12 “(A) treat as a dividend for purposes of sub-
13 paragraph (B) of paragraph (1), and

14 “(B) treat as a tax deemed paid for purposes
15 of subparagraph (A) of paragraph (2), foreign
16 income taxes which such other corporation has
17 paid or deemed paid in the same proportion on or
18 with respect to the accumulated profits of such
19 corporation from which such dividend was paid,
20 which the amount of such dividend bears to the
21 amount of such accumulated profits in excess of
22 all income taxes (other than those deemed paid).

23 For purposes of this section, only a tax for which a
24 credit against tax would be allowable under section

1 901 (determined without regard to the limitations in
2 section 904 and 907) shall be taken into account.”.

3 Nothing in this section shall subject any dividend, other
4 income item or portion thereof to taxation if such taxation is
5 otherwise prohibited by any law, or rule of law, of the United
6 States.

7 (c) EFFECTIVE DATE.—The amendment made by this
8 section shall apply to taxable periods (for purposes of State or
9 local law) beginning after December 31, 1986.

10 (d) AMENDMENT OF THE TABLE OF SECTIONS.—The
11 table of sections for chapter 77 of such Code is amended by
12 adding at the end thereof the following new item:

“Sec. 7518. Income of corporations attributable to foreign corpora-
tions.”



doing it a much-
shorter length

10/22

55: note with thorough. Thorough note is 100% sure, will be
revised. Current fed for permit kind as to pt. 2,
and that note has been really proper (5 have
and 6 permit).

Nothing further the note due to linked to to.

Legis for little change, + will take name off Calif.
will not not feel legis.

Unitary taxation

Chipp Bridge

Cartier Corp : it stands

USG did not file, SG did
not.

SG asserted foreign oil
claim v. state tax

(claim that in Fla with
fuel oil) (unimproved
under James Lee case)

No. 84-902

84-922

84-1041

~~Ward~~ Ward Ward's Canada v.
Fla Dept of
Revenue