



# Les Schneider Speaks to Law 360 About Proposed Nexus Requirement in Foreign Tax Regulations

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Leslie J. Schneider

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IPB partner Les Schneider spoke to Law360 about his recently submitted comments to the IRS advocating that the nexus requirements should be eliminated from sections 901 and 903 in proposed foreign tax credit regulations, for an article entitled, "Treasury Urged To Rethink Proposed Nexus Requirement."

"Congress had a chance to review the rules in that area and didn't do anything about it, and basically blessed the existing rules," Ivins Phillips partner Les Schneider told Law360 on Tuesday. "So it does not seem appropriate for the Treasury to be going back to the rules before 1983 in light of what's happened."

Schneider, who coauthored the letter with Ivins Phillips partner Patrick J. Smith, said the legislative reenactment doctrine would seem to prevent what Treasury has proposed. In their letter, Schneider and Smith said the doctrine derives most prominently from a 1938 U.S. Supreme Court decision.

In that case, *Helvering v. Winmill*, the court ruled that Treasury regulations "long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval, and have the effect of law."

According to the letter, Congress was aware of the 1983 regulations when it overhauled the tax code in 1986 and made no additional changes to the definition of an income tax. The same review of rules took place again in 2017 when Congress enacted the Tax Cuts and Jobs Act and adopted no "wholesale changes" to the definition of creditable foreign tax, Schneider and Smith said.

Accordingly, the subsequent proposed rule "so soon after the enactment of the TCJA strongly calls for the invocation of the legislative reenactment doctrine," according to the letter."