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Douglas L. Lindholm
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February 4, 2015

Oregon State Legislature
House Committee on Revenue

Re: H.B. 2099, Relating to tax reporting of multinational corporations

Dear Chairman Barnhart, Vice-Chair Bentz, Vice-Chair Pederson, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in opposition to H.B. 2099, a bill to modify, and generally expand, the list of purported “tax haven” countries singled out for inclusion in the Oregon corporate income tax base. This legislation represents the regrettable next step to the unfortunate action taken by the Oregon State Legislature in 2013 to designate certain jurisdictions as tax havens. Once this process is undertaken, it is only a matter of time until some of the United States’ key trading partners are unilaterally “blacklisted” in an attempt to dictate federal tax policy at the state level. Because of the inherent flaw in the state tax haven approach (an approach the U.S. Government has never embraced), COST respectfully urges this Committee to abandon the effort to further target U.S. trading partners for discriminatory treatment and instead look for more precise and equitable methods to address any perceived tax avoidance.

Tax Haven Lists are Arbitrary and Misleading. As COST stated in June 2013 when the original tax haven proposal was still under consideration by the Oregon State Legislature, the branding of specific nations as “tax havens” and thereby penalizing companies that merely do business or are incorporated there is poor tax policy. “Blacklisting” of specific countries is overly broad, and it may result in double taxation of legitimate business activities. In fact, the blacklisting approach has been almost universally rejected as a means of dealing with tax avoidance strategies: of the few states that have any “tax haven” provisions, only Montana and Oregon have taken the “blacklist” approach of designating specific countries as tax havens through legislation. It is instructive that the California Legislature conducted an extensive examination of such a “tax haven” approach and rejected it.¹ The greatest flaw in the “tax haven” listing approach, however, perhaps is demonstrated by the choice that now faces this Committee: whether and how to adjust the list.

¹ See the California report here:
http://caleuropeantrade.senate.ca.gov/sites/caleuropeantrade.senate.ca.gov/files/Waters_Edge_CA_J_obs_and_International_Investment_Opportunities_5-19-2010.pdf

The Oregon Department of Revenue, in its January 1, 2015 report to the Legislature, applied certain criteria developed by the Multistate Tax Commission (MTC) against its understanding of the tax regimes in certain countries. As a result of this exercise, several new jurisdictions including The Netherlands and Switzerland are recommended for inclusion in Oregon's statutory list. It is not clear why certain countries (such as Ireland, which is included in a current Montana proposal, S.B. 167) are not examined in the Oregon Department of Revenue's report. Instead, certain countries are cherry-picked for evaluation under the MTC criteria which are in turn taken from the abandoned OECD approach (the OECD country list was not meant for the same purpose and is no longer maintained). Other testimony to this Committee, from affected nations and from foreign direct investors in Oregon, will highlight the grave concerns with expanding the tax haven list to these countries. However, we wish to highlight that this exercise is itself arbitrary and if taken to its logical conclusion will likely put Oregon in a difficult situation as it courts investment from abroad.

COST respectfully urges the Committee to reject H.B. 2099 and instead examine opportunities to do away with the tax haven list entirely in favor of a policy that is coherent and effective in addressing clearly articulated concerns with income shifting and tax avoidance.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas L. Lindholm". The signature is fluid and cursive, written over a light blue horizontal line.

Douglas L. Lindholm

Cc: COST Board of Directors