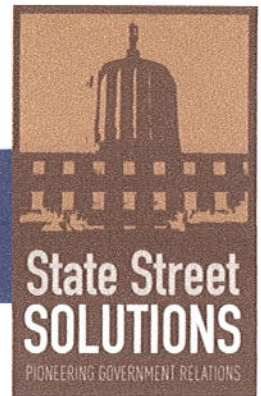


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Rep. Barnhart .

Iberdrola Renewables, Inc.

Oregon Midwifery Council

Motor Vehicle Software Corporation USA

3M

Deloitte Consulting, LLP

Universal Health Systems of Delaware, Inc.

Growers PAC

Crown Castle USA Inc.

 The Netherlands

Higher One

House Bill 2099

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies list of jurisdictions of incorporation for which income must be included on Oregon corporate excise tax return, if corporation is member of unitary group with Oregon corporation.

Applies to tax years beginning on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax reporting of multinational corporations; creating new provisions; amending ORS
3 317.715; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 317.715 is amended to read:

6 317.715. (1) If a corporation required to make a return under this chapter is a member of an
7 affiliated group of corporations making a consolidated federal return under sections 1501 to 1505
8 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined begin-
9 ning with federal consolidated taxable income of the affiliated group as provided in this section.

10 (2)(a) For purposes of determining Oregon taxable income, the taxable income or loss of any
11 corporation that is a member of a unitary group and that is incorporated in any of the following
12 jurisdictions shall be added to federal consolidated taxable income:

13 (b) Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize,
14 Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica,
15 Gibraltar, Grenada, **Guatemala**, Guernsey-Sark-Alderney, **Hong Kong**, the Isle of Man, Jersey, **the**
16 **Kingdom of the Netherlands**, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands,
17 Mauritius, [*Monaco*,] Montserrat, Nauru, [*the Netherlands Antilles*,] Niue, Samoa, San Marino,
18 Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, **Trinidad and Tobago**,
19 the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

20 (3) If the affiliated group, of which the corporation subject to taxation under this chapter is a
21 member, consists of more than one unitary group, before the additions, subtractions, adjustments and
22 modifications to federal taxable income provided for in this chapter are made, and before allocation
23 and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable
24 income shall be computed. Modified federal consolidated taxable income shall be determined by
25 eliminating from the federal consolidated taxable income of the affiliated group the separate taxable
26 income, as determined under Treasury Regulations adopted under section 1502 of the Internal Re-
27 venue Code, and any deductions or additions or items of income, expense, gain or loss for which
28 consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the
29 Internal Revenue Code, attributable to the member or members of any unitary group of which the
30 corporation is not a member.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (4)(a) After modified federal consolidated taxable income is determined under subsection (3) of
2 this section, the additions, subtractions, adjustments and modifications prescribed by this chapter
3 shall be made to the modified federal consolidated taxable income of the remaining members of the
4 affiliated group, where applicable, as if all such members were subject to taxation under this chap-
5 ter. After those modifications are made, Oregon taxable income or loss shall be determined as pro-
6 vided in ORS 317.010 (10)(a) to (c), if necessary.

7 (b) In the computation of the Oregon apportionment percentage for a corporation that is a
8 member of an affiliated group filing a consolidated federal return, there shall be taken into consid-
9 eration only the property, payroll, sales or other factors of those members of the affiliated group,
10 and of those corporations described in subsection (2) of this section, whose items of income, expense,
11 gain or loss remain in modified federal consolidated taxable income after the eliminations required
12 under subsection (3) of this section. Those members of an affiliated group making a consolidated
13 federal return or a consolidated state return may not be treated as one taxpayer for purposes of
14 determining whether any member of the group is taxable in this state or any other state with re-
15 spect to questions of jurisdiction to tax or the composition of the apportionment factors used to at-
16 tribute income to this state under ORS 314.280 or 314.605 to 314.675.

17 (5) The Department of Revenue shall adopt rules:

18 (a) To determine the computation of income or loss for a corporation that is a member of a
19 unitary group and that is not otherwise required to file a consolidated federal return.

20 (b) To prevent double taxation or double deduction of any amount included in the computation
21 of income under this section.

22 **SECTION 2. The amendments to ORS 317.715 by section 1 of this 2015 Act apply to tax**
23 **years beginning on or after January 1, 2015.**

24 **SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015**
25 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

26

The Netherlands Should Not Be Included on Oregon's "Tax Havens" List

Important Trading Partner

The Netherlands is a highly-developed industrial and trading center, with the largest port in Europe. *Oregon's only year-round direct flight to Europe is to Amsterdam*, one of the busiest airports in the world. Estimates from 2011 attribute 211 Portland airport jobs to this connection, as well as 1,341 Oregon tourism jobs. This impact has likely grown since 2011.

Direct investment in US companies: \$275 billion in 2012, making the Netherlands the world's third-largest investor in US business.¹ These ties support nearly **685,000 US jobs**. In Oregon, these investments include AkzoNobel Wood Finishes & Adhesives in Salem, EcoFys sustainable energy consultants in Corvallis and several other companies in the Portland area.

Not a Tax Haven

The Netherlands' tax laws cannot constitute grounds to justify treating it as a tax haven. As a major industrial and trading country, deeply integrated in the European Union, *the Netherlands depends on the rule of law for its own success*.

1. Transparency, international cooperation, reporting abuse. Historically, every nation has developed its own tax system independently. Due to the absence of integration between the various national legal systems, mismatches can occur that taxpayers can use to minimize their tax burdens. However, the Netherlands works together with the European Union, the Organization for Economic Cooperation and Development and other international organizations to promote tax compliance, to avoid aggressive tax planning by international businesses and to increase tax transparency. The Netherlands was one of the first to begin negotiating with the US Federal Government to report taxpayer information under the Foreign Account Tax Compliance Act (*FATCA*), resulting in the signing of an agreement in December 2013. The US-Netherlands tax treaty dates from 1992, and was updated in 2004.
2. Tax rate, incentives, avoiding double taxation. The Netherlands has a robust general tax system with a rate of 25% on corporate income and a 20% rate on income below €200,000. Also, the Netherlands has an internationally comparable effective tax rate. Like many countries and US states (including Oregon), the Netherlands also uses tax incentives to *stimulate economic development* and takes steps to *prevent double taxation*. This concerns:

¹ Netherlands Embassy, June 19, 2014, available at <http://dc.the-netherlands.org/news/2014/06/economic-ties-2014.html>

- a. Special rate for R&D investment income. Recognizing the value of attracting innovative investments, the Netherlands allows a 5% tax rate that is limited to income from qualified investments. Real business activities in the Netherlands are thereby required. ***Non-R&D income remains taxed at 25%***. Also other EU Member States have special regulations for R&D investment income. Currently, in the EU and the OECD different proposals on the scope of tax-related innovation regimes are under discussion (e.g. a modified nexus approach for innovation boxes).
 - b. Participation exemption (received dividend) regime. Dutch tax law ***prevents double taxation*** of the same income by allowing a company that holds at least a 5% interest in a subsidiary to exempt dividends and capital gains from tax in the Netherlands. This “participation exemption” does not apply if the subsidiary is a low-taxed portfolio investment, in this case a credit system applies. Many other (European) countries implemented a similar participation exemption regime. Other countries and US states use methods such as consolidated returns and dividends-received deductions for a similar purpose. Within the EU the parent & subsidiary directive applies, which effectively provides for a similar regime, namely exemption of dividends received from subsidiaries engaged in active business. This Council of the EU recently agreed to amend this directive so as to counter situations of tax avoidance.²
3. Actively combating abuse. The Netherlands actively supports the initiatives of the G20, OECD and EU have taken to combat tax avoidance ***and evasion***, for example by actively participating in the Base Erosion Profit Shifting project of the OECD. These initiatives include, as important spearheads, proposals to improve transparency and automatic exchange of information and to modernize bilateral tax treaties. Further, the Netherlands actively seeks to update its tax treaty network by including anti-abuse provisions. For example, as per 30 August 2013 the Netherlands government announced to actively approach 23 developing countries so as to update the double tax conventions with these countries by including of an anti-abuse provision.³

Conclusion

The legislature should not add the Netherlands to the list of tax haven jurisdictions. As an important trading partner governed by the rule of law, the Netherlands maintains a highly regulated tax system, with typical incentives for active businesses; and is actively working on the domestic and international fronts to combat tax abuse and international tax avoidance.

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/146127.pdf

³ <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/08/30/kabinetsreactie-op-seo-rapport-overige-financiele-instellingen-en-ibfd-rapport-ontwikkelingslanden.html>