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Good Food, Good Life

ALAN PASETSKY
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TAX DEPARTMENT

June 16, 2015

RE: Opposition to S.B. 61 and the -2 and -3 Amendments

To Senate Finance and Revenue Committee Members

On behalf of Nestlé USA and its affiliates, I urge opposition to S.B. 61 and the -2 and -3 amendments, proposals that would expand the state's tax haven list. Labeling any country as a tax haven is arbitrary and misaligns with global and U.S. tax norms. I urge you to oppose tax haven list policy because it positions Oregon as a far less competitive location for foreign direct investment (FDI), jeopardizing future job creation from globally-headquartered companies like mine.

As you know, U.S. subsidiaries of global companies employ over 46,000 people in the state. These jobs are in important sectors like research and development, senior management, and manufacturing, resulting in average salaries more than 33 percent higher than economy norms. These are the very jobs states seek to attract, but which are put at risk because of this legislation.

My company opposes the tax haven blacklist policy for many reasons.

First, this blacklist approach assumes my company is an abusive tax evader because we operate in these deemed countries. However, the mere fact that my company could be incorporated in one of these countries does not mean tax avoidance. On the other hand, we could be located in these nations for countless, legitimate business purposes, like manufacturing, engaging in research and development, streamlining a supply chain, or reaching new customers. But this policy fails to distinguish between legitimate corporate actors and tax evaders, offers no safeguards, and imposes punitive taxation to all unitary firms in these countries, which is alarming and arguably unconstitutional.¹

My company is also growing around the globe, frequently acquiring or merging with companies. What happens if my company acquires a legitimate business operating in Bermuda or Guatemala? Suddenly, we will face punitive taxation in Oregon because of a calculated business decision that has nothing to do with tax evasion.

Additionally, the -2 Amendments and -3 Amendments fail to solve our concerns because neither set of solutions would carve out legitimate business transactions. There is no tax treaty carve out nor arms-length and business purpose test, norms seen in state international state tax policies across the country.

¹ See *Japan Lines, Ltd. V. Los Angeles County*, 441 U.S. 434 at 450 (1979).

Further, we urge the Committee to adopt “effectively connected income” language, the standard used by the Internal Revenue and Service and numerous states as a threshold to tax income of non-U.S. companies.

As well, -2 and -3 Amendments would require the Department of Revenue to recommend additions to the tax haven country list every two year. This could potentially subject the legislature to the same debates in future years – like the state witnessed this year with Switzerland and the Netherlands

No other state except Montana has a tax haven list, and Montana ranks dead last of all states in total job creation from FDI. Additionally, in the past two years, every other state has rejected bills that would adopt the tax haven blacklist policy approach—except Oregon. Rhode Island is the only other state that enacted tax haven legislation into law during this period, but they used a criteria test instead of the blacklist approach and, most importantly, built in safeguards to protect legitimate business transactions.

Simply put, S.B. 61 and the -2 and -3 Amendments would continue to damage the state’s reputation among potential foreign investors like my company looking to invest and expand operations. These policies are clear, discriminatory tax policies that fail to distinguish legitimate business activities from abusive transactions. How could Governor Brown or any future Governor promote Oregon as an attractive market to firms based in any of the listed nations?

Thank you for your consideration of this important issue for my employees and the broader international business community.

Sincerely,

Alan Pasetky
Vice President and Tax Counsel
Nestlé USA, Inc.