June 26, 2015
TO: Chair Barnhart, Vice-Chair Benz, House Committee on Revenue
cc: Committee Staff
FR: Dave Rosenfeld, OSPIRG
RE: SB 925B: new provisions in –A6 amendment weaken 2013 tax haven law; omit important tax havens

On behalf of OSPIRG, I am writing to express our concern about SB 925B, incorporating the –A6 amendments adopted by the House Revenue Committee on Tuesday June 23. Those amendments include a provision that a) weakens Oregon's landmark, bipartisan tax havens law from 2013 and; b) omits two critical tax havens recommended by the Department of Revenue for inclusion in the law.

The Legislature unanimously adopted the 2013 law, which identified an extensive list of tax haven countries and required Oregon corporate tax filers to add income from any subsidiaries in those countries to their Oregon taxable income. The measure was based on a successful 2003 MT law, and is projected by the Legislative Revenue Office (LRO) to keep up to $40M in Oregon by the 2019-21 biennium, rather than parked in offshore tax havens such as the Cayman Islands.

Unfortunately, SB 925B (Sections 54-56) weakens the law by creating a loophole that a tax filer could use to exempt itself from the law, using a laborious process and subjective language that could tie up state revenue officials with additional paperwork and litigation should the revenue department try to push to appropriately implement the law. The net effect could gut the law. Section 54 (2). OSPIRG opposes provision and urges you to advocate for its removal from the final legislation.

Additionally, SB 925B omits two critical tax havens – The Netherlands and Switzerland – that the revenue department recommends for inclusion. We were glad to see the inclusion of other tax havens recommended by the department, but concerned that the above two omissions could create loopholes that allows companies to undermine the intent of our tax haven law.

More on each of these concerns as follows:

**A. The Netherlands is the home of the infamous "Dutch Sandwich",** famously used by Google to shrink its tax bill by $2B a year. 50% of U.S. Fortune 500 companies reported subsidiaries in the Netherlands in 2013, and reported holding $127 billion in US corporate profits in 2010 alone. The country has made claims in the past they are not a tax haven. However, they are. Their specific designation is a "conduit tax haven" – their laws are designed to allow subsidiaries to pump profits out of countries where profits were earned, and into destination tax havens.

**B. Switzerland reported holding $47 billion in U.S. corporate profits in 2013, just behind the Cayman Islands.** Over 30% of the U.S. Fortune 500 companies reported subsidiaries in Switzerland, making it one of the most widely used in the world.

We can provide more information to support this point; here are some quick links:

- New York Times: primer on the scheme and how Apple has used this strategy.
- Video made by a Swiss financial firm that specializes in offshore tax avoidance schemes.

- OSPIRG Foundation, Offshore Shell Games 2014 (see especially Figure 1 on p. 9 and Appendix starting on p. 21 for detailed data on The Netherlands and Switzerland).

**C. RE: the loophole/exemption provision in Section 54(2).**

This provision would allow a company to exempt itself from the tax haven law if it claims that tax haven income is unrelated to its domestic business activities. One likely argument in favor of this approach is that it ensures companies are not unfairly taxed by Oregon on business income derived from other countries.

For example, let's say that a corporation doing business in Oregon is part of unitary group that is sheltering income in Luxembourg by deducting interest on artificially created loans from a wholly owned Luxembourg banking subsidiary. This is called "earnings stripping". The earnings being stripped might come from jointly owned corporations operating in the U.S., Germany, France and elsewhere. The argument goes that by putting the Luxembourg banking subsidiary into the combined report (which is what the tax haven law does), Oregon may be including in the pre-apportionment tax base income that came from Germany or France—and that income, the argument goes, should be removed.

In response:

1. This problem is unlikely; the income in the instance above may not be material either because the German or French income is small or, more likely, the Oregon apportionment percentage is small in comparison to the global operations. In either case, this provision may be "crying wolf", with the result of mucking up existing law with unnecessary complexity.

2. If there really is a material problem with the French or German income, Oregon law already provides much simpler solutions to the problem. The first remedy is the apportionment system in ORS Chapter 314; the second is the "relief" provision under UDITPA (Uniform Division of Income for Tax Purposes Act)" that allows DOR either on its own or at the request of a taxpayer to adjust apportionment factors or make any other adjustments if the apportionment results do not fairly reflect the business activity of the taxpayer in Oregon.

3. If the Legislature is still concerned that Oregon law doesn't provide enough remedy, it should give corporations the option to elect worldwide combined reporting, which is simpler, more accurate and transparent.

4. SB 925B, by contrast, is a convoluted approach that puts the burden on tax officials to push back each time a company exempts itself from tax haven law, increasing complexity and the chance of litigation. That process could be prone to unnecessary disputes over whether specific items of income are or are not directly or indirectly related to the unitary group operating in Oregon. It could also lead to disputes over whether the item has been properly computed. Formula apportionment and combined reporting were invented precisely to get away from this kind of accounting complexity.

LRO maintains in their fiscal report to the legislature that SB 925B provisions for tax havens won't change the revenue impact of the original tax havens law. It is understandable that LRO would be unable to calculate a revenue impact on the loophole provision, but if one accepts our analysis

above, it's clear there could be one. Finally, LRO acknowledges in the fiscal report to the legislature that they have no data as of yet on the impact of the existing law – which in our view is all the more reason to first let the original law start working, gather hard information on its effects and make any adjustments later, using actual evidence.

I appreciate your consideration of our concern. I can be reached at daver@ospirg.org or 503-709-8676 if you wish to discuss this further. I am also willing and able to put you in contact with a variety of state and national experts on tax evasion and tax havens if you wish to get other perspectives on the matter.

Sincerely,

Dave Rosenfeld

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