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March 15, 2017

Oregon State Legislature
House Committee on Revenue

Re: Comments in Opposition to H.B. 2067, Tax Haven Blacklists Updates

Dear Chairman Barnhart and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in opposition to H.B. 2067, a bill to modify the list of purported “tax haven” countries singled out for inclusion in the Oregon corporate income tax base. Although H.B. 2067 as introduced seeks to eliminate a jurisdiction from the tax haven “blacklist,” COST is opposed to states designating foreign countries as “tax havens” for purposes of income tax base expansion. The State Tax Research Institute (“STRI”), a foundation affiliated with COST, released a comprehensive study in 2016 on tax haven legislation that details why such legislation is bad tax policy.¹ Based on the findings in our study and for the reasons discussed below, COST respectfully urges this Committee to abandon the effort to target U.S. trading partners for discriminatory treatment and instead look for more precise and equitable methods to address any perceived tax avoidance.

COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST’s objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Tax Haven Lists Are Arbitrary and Misleading

The branding of specific nations as “tax havens,” thereby penalizing companies merely incorporated there, is a counterproductive tax policy. “Blacklisting” specific countries is overly broad, and it may result in double taxation of legitimate business activities.

As this Committee is aware, Oregon’s “tax haven” list is derived largely from a list created over 15 years ago by the Organization for Economic Co-operation and Development (“OECD”) to encourage countries to adopt greater transparency and information sharing about tax issues, not to broaden the tax base of member

¹ See STRI’s State Tax Haven Legislation: A Misguided Approach to a Global Issue: <http://cost.org/WorkArea/DownloadAsset.aspx?id=92483>.

countries. As of today, no countries remain on the OECD's list of uncooperative tax jurisdictions. Moreover, neither the United States nor the OECD in its "base erosion/profit shifting," or "BEPS," project has adopted the "tax haven" list approach. Neither state legislatures nor state revenue departments are equipped to make determinations the U.S. Government declined to exercise.

The Slippery Slope to Worldwide Unitary Combination

Tax haven lists apply, on a selective country-by-country basis, the discredited "worldwide" combination method for the state taxation of multinational businesses. State attempts in the 1970s to tax the income of the worldwide unitary group, including entities with no U.S. presence, created considerable apprehension among both foreign governments and foreign and domestic multinational business enterprises, instigating what many thought would be an international tax war. Indeed, in 1985, the United Kingdom took the unprecedented approach of approving legislation that would have allowed the U.K. Treasury to penalize multinational companies with operations in any U.S. state employing worldwide combination. A Presidential Working Group agreed to forestall federal intervention if states limited unitary combination to a domestic water's-edge approach.² The Department's maintenance of Oregon's blacklist undermines the 30-year consensus among the states to limit their income tax base to the "water's-edge" and avoid the taxation of income earned outside the United States. The tax haven list approach interferes with U.S. foreign relations, threatening our nation's ability to "speak with one voice" in its dealings with our key trading partners and will likely be subject to judicial challenge in the coming years.

Although COST is not opposed to the removal of Guatemala from Oregon's blacklist, COST opposes the expansion of the list. Further, for the reasons discussed above and those cited in the STRI study, COST respectfully urges the Committee to reject H.B. 2067 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,



Nikki E. Dobay

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

² Final Report of the Worldwide Unitary Taxation Working Group, Chairman's Report and Supplemental Views (August 1984).

