

## Repealing Oregon's Tax Haven Law is a \$20 Million Gamble

The Oregon legislature should act prudently and refrain from hastily eliminating the state's tax haven law. Otherwise, the legislature could be making it easier for multinational corporations to avoid paying Oregon corporate taxes, potentially costing the state millions.

In response to the federal tax law enacted by Congress in December, the Oregon Senate has approved a bill that, among other things, eliminates Oregon's tax haven law.<sup>1</sup> But much uncertainty surrounds the federal tax law, particularly how it will affect Oregon's taxation of multinational corporations in the future.

Rather than act without adequate information, lawmakers should ask the Oregon Department of Revenue to study the interaction of the new federal law and the Oregon tax haven law, and report back in 2019.

### **Oregon's tax haven law clamps down on corporate tax avoidance**

One of the ways corporations avoid paying taxes in the U.S., including in states like Oregon that levy a corporate income tax, is through the use of foreign tax havens. Corporations artificially shift their profits from the place where they were earned to a foreign jurisdiction with a low or zero tax rate. The U.S. loses \$100 billion in tax revenue each year from tax havens, according to one study.<sup>2</sup> Another puts Oregon's loss in 2011 at \$225 million.<sup>3</sup>

Oregon's tax haven law serves to reduce the loss of tax revenue to Oregon. It requires multinational corporations to report on their corporate tax returns the income earned in a list of more than 40 countries that have a history as tax havens.<sup>4</sup> An official estimate shows the tax haven law buoyed Oregon's budget by about \$20 million in the 2014 tax year.<sup>5</sup>

### **Impact of the federal tax law is unclear and unpredictable**

In the closing weeks of 2017, Congress enacted a law that made significant changes to federal taxes, including taxes on multinational corporations. Because of the speed with which Congress moved the legislation and the lack of deliberation, the impact of many of the law's provisions remains unclear. The extent to which the new federal law will actually prevent the offshoring of corporate profits to tax havens is uncertain.

Proponents of the new federal tax law claim that its international tax provisions will discourage the shifting of corporate profits overseas more effectively than current law does. Critics, on the other hand, argue that it is a patchwork system that leaves in place some significant loopholes, perverse incentives, and escape hatches for profit shifting.<sup>6</sup>

A number of factors conspire to create uncertainty as to the impact of the new federal law. For one, the provisions in the tax law seeking to discourage the shifting of profits overseas makes the system even more complicated, and complexity often gives rise to new forms of tax avoidance.<sup>7</sup>

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Further, there has been no rulemaking, regulations, or clear Internal Revenue Service (IRS) guidance explaining how to implement the new provisions. Beyond the uncertainty about the effectiveness of the federal changes in preventing the offshoring of corporate profits, corporations are likely to challenge in court any future effort by Oregon to piggyback on these new federal provisions.<sup>8</sup>

Finally, the law itself does not eliminate the corporate incentive to shift profits to tax havens.<sup>9</sup>

### **The Oregon legislature should study the issue before acting**

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Given the uncertainty surrounding the impact of the federal tax law, it would be wise for the Oregon legislature not to repeal the state's tax haven law at this time. Lawmakers should direct the Oregon Department of Revenue to study the issue and report back in 2019. Repealing the law without more information could backfire on Oregon, possibly making it easier for multinational corporations to avoid paying state taxes.

### **Endnotes**

<sup>1</sup> Senate Bill 1529A passed out of the Oregon Senate on February 13. More information is available at <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/SB1529>. The main objectives of this bill are to ensure that a quirk in Oregon's law does not cause the state to lose revenue from the new federal law that imposes a one-time tax on accumulated profits held abroad by U.S. based multinational corporations and to enable the state to actually share in this revenue.

<sup>2</sup> Institute on Taxation and Economic Policy and U.S. Public Interest Research Group, *Offshore Shell Games 2017*, October 2017, available at <https://uspirg.org/sites/pirg/files/reports/USP%20ShellGames%20Oct17%201.2.pdf>.

<sup>3</sup> U.S. Public Interest Research Group, *Closing the Billion Dollar Loophole*, 2014, available at <https://uspirg.org/sites/pirg/files/reports/Closing%20the%20Billion%20Dollar%20Loophole%20Web%20vUS%20041414.pdf>.

<sup>4</sup> ORS 317.716(1)(b) lists these countries as tax haven: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, Bonaire, the British Virgin Islands, the Cayman Islands, the Cook Islands, Curacao, Cyprus, Dominica, Gibraltar, Grenada, Guatemala, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Montserrat, Nauru, Niue, Saba, Samoa, San Marino, Seychelles, Sint Eustatius, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu. Available at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors317.html](https://www.oregonlegislature.gov/bills_laws/ors/ors317.html).

<sup>5</sup> Oregon Legislative Revenue Office, "An Assessment of Oregon's Listed Jurisdiction Policy and its Cost Effectiveness," March 2017, available at <https://www.oregonlegislature.gov/lro/Documents/RR%204-17%20Tax%20Havens.pdf>.

<sup>6</sup> Reuven Avi-Yonah, et. al, *The Games They Will Play: An Update on the Conference Committee Tax Bill*, pp. 17-22, updated December 22, 2017, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3089423](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423).

<sup>7</sup> These provisions are called global intangible low-taxed income (GILTI), foreign-derived intangible income (FDII), and the base erosion and anti-abuse tax (BEAT). For an Oregon-centric and more detailed discussion of these provisions, see pages 80-87, available at <https://olis.leg.state.or.us/liz/2018R1/Downloads/CommitteeMeetingDocument/140708>.

<sup>8</sup> Doug Sheppard et. al, "How States Can Address Federal Tax Reform," *State Tax Notes*, February 12, 2018 (quoting state tax practitioner: "I see special [legislative] sessions either later this year or 2019 really

digging in and deciding how they want state tax regimes to look in light of the new federal changes, especially regarding foreign income. And then the third phase is litigation, which I think is inevitable — because undoubtedly, given the complexity, states are likely to do things that are questionable from a constitutional perspective.”)

<sup>9</sup> Michael Leachman and Michael Mazerov, *How Should States Respond to Recent Federal Tax Changes?*, Center on Budget and Policy Priorities, January 2018, available at <https://www.cbpp.org/research/state-budget-and-tax/how-should-states-respond-to-recent-federal-tax-changes>.