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House Committee on Revenue Hearing
Testimony on HB 2099
April 2, 2015

To House Committee on Revenue Members,

As Assistant Treasurer and Tax Counsel of Nestlé USA, I urge opposition to HB 2099, legislation that would expand the state's tax haven list to include Netherlands and potentially Switzerland, among other nations. Frankly labeling any country in this manner 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.

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.

HB 2099 would add the Netherlands and potentially Switzerland to the state's deemed tax haven list and lead to tax hikes to all unitary foreign affiliates based in these jurisdictions. Nestlé opposes this type of tax policy for many reasons.

First, this blacklist approach assumes Nestle is an abusive tax evader because we operate in these deemed countries. However, the mere fact that Nestle is incorporated in one of these countries does not mean tax avoidance. On the other hand, we are located in these nations for countless, legitimate business purposes, like manufacturing, engaging in research and development, 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]

Nestlé's worldwide headquarters is in Switzerland where the company began nearly 150 years ago, long before the advent of the US income tax system. In order to operate a business in the United States, there are legitimate, necessary, business transactions entered into between Nestlé USA and its foreign affiliates including its global parent company in Switzerland. HB 2099 would penalize these legitimate non-tax avoidance transactions resulting in potential double

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

taxation of income that even the federal government is unable to tax because of bilateral tax treaties.

Second, no state has ever deemed the Netherlands or Switzerland as tax havens. Rather, these two countries are two of America's most important trading partners and sources of foreign direct investment (FDI). Both nations have bilateral tax treaties with the United States. Firms from these countries provide 841,000 U.S. jobs and produce over $21 billion in annual exports. These businesses employ over 6,000 people in Oregon.

Finally, foreign companies invest in states that provide a predictable tax environment and which align their tax policies with global tax norms and tax treaties. Taxes clearly impact decisions about where to relocate, expand, or invest. If Oregon enacts legislation such as HB 2099 potentially subjecting foreign affiliates to double taxation by Oregon on income streams already taxed by in foreign countries (e.g. royalties and interest), this undoubtedly will be a factor in such future decision making. Additionally, the uncertainty of which nations will be added to the list in the future could further hurt the state's outreach efforts across the globe.

No other state except Montana has a tax haven list, and Montana ranks dead last of all states in total job creation from FDI. While Oregon's tax haven list is recent law, Montana's aggressive international tax tactics are well known and have contributed to its anti-competitive investment climate. It's because tax haven list 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 at attractive market to firms based in any of the listed nations?

Simply put, HB 2099 would damage the state's reputation among potential foreign investors like Nestle looking to invest and expand operations. We urge you to oppose HB 2099 and tax haven list policy overall to ensure Oregon remains a competitive and attractive location to invest and create jobs.

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

Sincerely,

Alan Pasetsky

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