ORGANIZATION *for* INTERNATIONAL INVESTMENT
Global Investment Grows America's Economy

June 16, 2015

Dear Senate Committee on Finance and Revenue Members,

On behalf of the Organization for International Investment (OFII), I urge the committee to oppose the -2 and -3 Amendments to S.B. 61 because they would have a substantial, negative impact on Oregon's ability to attract global investment and job creation.

OFII is a non-profit, business association representing the U.S. subsidiaries of many of the world's leading companies (membership list attached). OFII advocates for the fair, non-discriminatory treatment of U.S. subsidiaries and promotes policies that will encourage them to expand U.S. operations, increase American employment and wages, and boost U.S. economic growth. These firms employ 5.8 million Americans nationwide, including over 46,000 in Oregon, and help drive American manufacturing, innovation and exports.[1]

OFII Concerns with -2 and -3 Amendments to S.B. 61

First, the -2 and -3 Amendments would expand the state's tax haven list to Guatemala, Trinidad and Tobago, and Hong Kong and impose punitive taxation to unitary firms operating in these locations, regardless if they are located in these jurisdictions with substantial business purpose or for tax evasion purposes.

The -2 and -3 Amendments would also require the Department of Revenue to recommend additions to the tax haven country list every two years. This could potentially subject the legislature to perennial debates if significant U.S. trading partners and sources of FDI are deemed tax havens in future years – like the state witnessed this year with Switzerland and the Netherlands.

Additionally, the -2 and -3 Amendments would still fail to provide exceptions for legitimate business transactions in these jurisdictions. The tax treaty exception and arms-length business purpose test proposed by the -8 Amendments to H.B. 2099 are common norms adopted by states. These safe boards align with state and national tax norms and prevent the disruption of bilateral tax treaty protections negotiated to encourage cross-border investment flows. Rhode Island took this approach last year when passing tax haven legislation. However, the -2 and -3 Amendments offer no such protections.

Furthermore, while the -2 and -3 Amendments would limit the scope of Oregon's tax reach by allowing the taxpayer to eliminate any transaction not attributable "directly or indirectly" to

[1] All statistics in this testimony are the latest data from the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) released January 2015 regarding the U.S. subsidiaries of internationally-headquartered companies. See Addendum's B and C for additional statistics at national and Oregon levels

activities with unitary affiliates in a federal consolidated or separate return, this language is still concerning. We feel this proposal is vague and questions will remain in compliance and administration of this law. For example, what would qualify as an "indirect" activity to a transaction?

Rather than this approach, we urge the Committee to subject Oregon tax to only "effectively connected income" to the United States. This change would align Oregon's tax methodology with the standard used by the Internal Revenue Service and other states. For example, in Governor Cuomo's recently enacted FY 2014-2015 Budget, the state adopted ECI as a starting point for foreign companies.[2] Additionally the District of Columbia[3] and West Virginia[4], to name a few, use ECI in taxing non-U.S. companies. Additionally, this standard is easier for the state to audit since it is more objective and commonly understood.

Finally, the -2 Amendments only would create a new concern, unseen in the original bill. Specifically, Section 2(3) would allow the Department of Revenue to assert that any country is a tax haven, even those not listed by statute, effectively granting unchecked authority to the Department of Revenue during audit. Therefore, if the Department of Revenue determines Switzerland, the Netherlands, or the United Kingdom meet the tax haven criteria (even if not on the list), it can force any unitary affiliate in these nations to be subject to the same tax treatment as if they were located in a listed tax haven country.

Ultimately, the -2 and -3 Amendments fail to improve the already flawed tax haven policy of Oregon and would exasperate concerns in the state, including:

- **Harms Oregon's efforts to attract foreign direct investment (FDI):** These amendments would still misalign with economic development efforts to attract investment directly from any company based in or with affiliates in the listed nations. It is impossible to predict which foreign-based company will make the next major investment in Oregon, but the state would be erecting barriers to known sources of investment and job creation. Additionally, the uncertainty of which jurisdictions will be added to the list and the tax treatment other global companies receive in Oregon could hurt the state's outreach efforts across the globe.

- **Undermines U.S. bilateral tax treaties:** These amendments would still violate the principles of existing and future bilateral tax treaties, positioning Oregon as a clear outlier in international tax policy. The agreements provide a reliable tax environment for companies operating across borders. They prevent double taxation and provide important sharing of information between governments to ensure appropriate taxes are paid. Oregon's tax haven policy imposes tax on the very income streams (i.e. royalties and interest) that these treaties explicitly protect from double taxation.

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[2] S.B. 6359, A.8559, (Chapter 59), enacted 3/31/2014, available at http://assembly.state.ny.us/leg/?default_fld=&bn=S06359&term=2013&Summary=Y&Actions=Y&Memo=Y&Text=Y

[3] District of Columbia § 47-1810.07(a)(2)(D), available at http://dccode.org/simple/sections/47-1810.07.html

[4] West Virginia § 11-24-13f(a)(4), available at http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=11&art=24&section=13F

- **Invites retaliatory legislation:** Since these amendments would still undermine the U.S. treaty network, this perceived encroachment could lead to retaliation from the United States' trading partners.

- **Damages Oregon's competitiveness:** 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. Thus, this amendment would threaten Oregon's ability to continue to compete for FDI when 48 other states do not impose punitive taxation on firms simply because they have affiliates located in certain jurisdictions.

- **Leads to U.S. Constitution disputes:** The Supreme Court has previously struck down state laws that frustrate Congress's ability to "speak with one voice" in its foreign dealings as regulated by the Foreign Commerce Clause. For example, the Court struck down a unique California tax practice based partially on concerns it would interfere with the ability of Congress to speak with one voice, see *Japan Lines, Ltd. V. Los Angeles County*, 441 U.S. 434 at 450 (1979). Oregon's law, which taxes corporations based solely on the fact that they are engaging in business in a certain country, could frustrate and interfere with the federal government's ability to regulate and maintain its relations with those foreign governments and thus may be unconstitutional.

Therefore, we urge the Committee to reject the -2 and -3 Amendments and S.B. 61 altogether. Rather, we feel the Committee should consider Amendments similar to the -8 Amendments to H.B. 2099.

Thank you for your consideration. For any additional questions, please contact Evan Hoffman, Senior Manager of State Government Affairs at ehoffman@ofii.org or 202-659-1903.

Sincerely,

Nancy McLernon
President and CEO
Organization for International Investment

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Global Investment Grows America's Economy

OFII is the only business association in Washington D.C. that exclusively represents U.S. subsidiaries of foreign companies and advocates for their non-discriminatory treatment under state and federal law.

Members

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Flextronics International
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GDF SUEZ Energy North America, Inc.
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GlaxoSmithKline
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Hyundai Motor America
Iberdrola Renewables
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JBS USA
John Hancock Life Insurance Co.
Kering
Kia Motor Corporation
Lafarge North America
Lenovo
L'Oréal USA, Inc.
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Louis Dreyfus Commodities
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LVMH Moet Hennessy Louis Vuitton
Macquarie Aircraft Leasing Services
Maersk Inc
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Mallinckrodt
Maquet
Marvell Semiconductor
McCain Foods USA
Medtronic, Inc.
Michelin North America, Inc.
Miller Brewing Company
Morton Salt, Inc.
National Grid
Nestlé USA, Inc.
Nissan
Nomura Holding America, Inc.
Novartis Corporation
Novo Nordisk Pharmaceuticals
Oldcastle, Inc.
Panasonic Corp. of North America
Pearson Inc.
Pernod Ricard USA
Philips Electronics North America
QBE the Americas
Randstad North America
RELX Group
Restaurant Brands International
Rexam Inc
Rio Tinto America
Roche Holdings, Inc.
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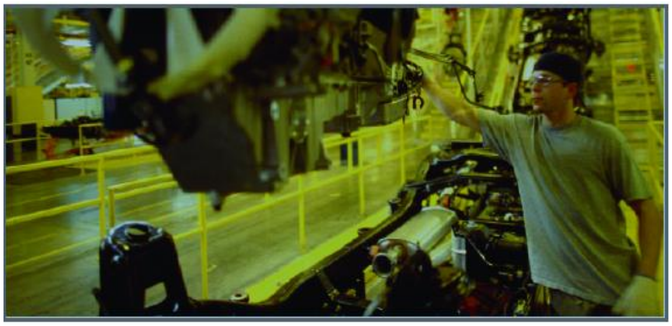
Safran USA
Samsung
Sanofi US
SAP America
Sasol Chemicals (USA) LLC
Schlumberger
Schneider Electric USA
Schott North America
SCOR
Shell Oil Company
Shire Pharmaceuticals
Siemens Corporation
Smithfield
Smith & Nephew, Inc.
Solvay America
Sony Corporation of America
SSAB Americas
Sumitomo Corp. of America
Swiss Re America Holding Corp.
Syngenta Corporation
Takeda North America
Tate & Lyle
TE Connectivity
Teva Pharmaceuticals USA
Thales USA, Inc.
The Nielsen Company
The Tata Group
Thomson Reuters
ThyssenKrupp North America, Inc.
Toa Reinsurance of America
TOTAL Holdings USA, Inc.
Toyota Motor North America
Transamerica
Tyco
UBS
UCB
Umicore
Unilever
Vivendi
Vodafone
Volkswagen of America, Inc.
Volvo Group North America
Westfield LLC
White Mountains, Inc.
Wipro Inc.
Wolters Kluwer U.S. Corporation
WPP Group USA, Inc.
XL Global Services
Zurich Insurance Group

INSOURCINGFACTS

THE ROLE OF U.S. SUBSIDIARIES OF GLOBAL COMPANIES IN THE AMERICAN ECONOMY.



Jobs - Employ 5.8 million Americans, or 5 percent of private sector employment.

Payroll - Support an annual payroll of $456 billion, paying U.S. workers an average of $78,927 - more than 33 percent higher than the economy-wide average.

GDP - Add $774 billion in value to the U.S. economy annually, or 5.5 percent of U.S. GDP.

Manufacturing - Provide over 2.2 million manufacturing jobs, accounting for over 18 percent of America's manufacturing workforce.

Manufacturing Payroll - Pay an average salary of $85,807 to employees in manufacturing sector, higher than the nation-wide manufacturing average of $76,863.

Exports - Produce over 21 percent of U.S. exports, providing $334 billion in American goods and services annually to customers around the world.

Taxes - Pay 16 percent of federal corporate income taxes. *Source: IRS*

Research and Development - Spend $48 billion annually on U.S. research and development activities, or 15 percent of all R&D performed by U.S. companies.

Capital Investment - Invest $201 billion annually, or over 10 percent of all such business investment in the U.S. economy.

Bricks and Mortar - Spend an annual $201 billion on plant construction and new equipment.

Purchase Locally - Purchase hundreds of billions in goods and services every year from local suppliers and small businesses in the U.S.

Reinvestment - Reinvest an annual $100 billion of their earnings into their U.S. operations.

Unions - Employ a higher percentage of union workers than the national average. 12.4 percent of employees at U.S. subsidiaries are covered by a union collective bargaining agreement, compared to 8.2 percent at all U.S. businesses. *Source: BEA November 2009 data*

All statistics unless otherwise noted are the latest data from the Department of Commerce's Bureau of Economic Analysis (BEA) released August 2012 regarding the U.S. subsidiaries of internationally-headquartered companies.

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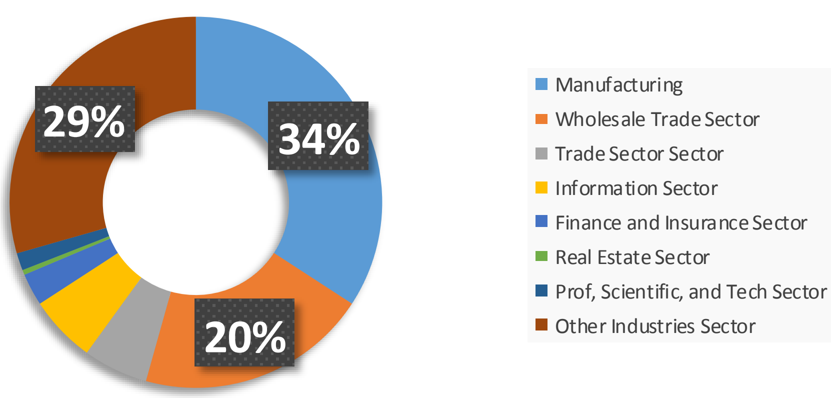
Foreign Direct Investment in Oregon

MEASURING THE IMPACT OF GLOBAL COMPANIES INVESTING IN THE BEAVER STATE

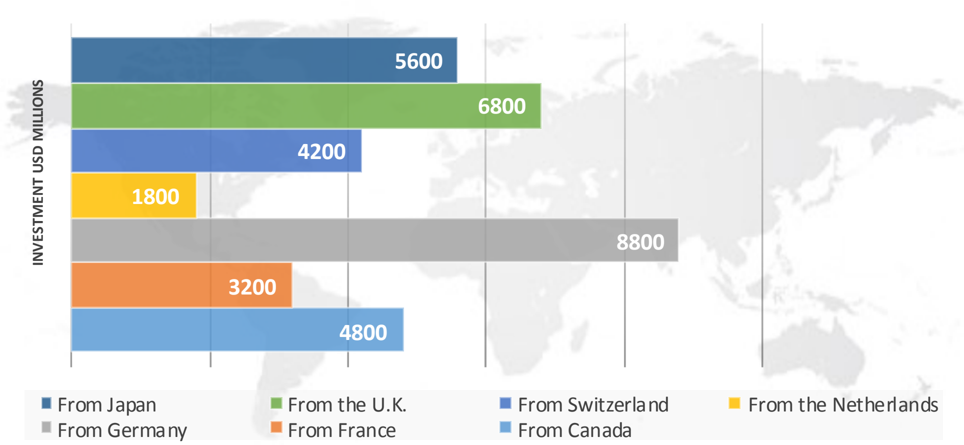
FDI Trends for Oregon

- Total employment by U.S. subsidiaries in OR did not change in 2012
- Between 2002 and 2012, total employment by U.S. subsidiaries decreased by 10 percent
- Manufacturing employment by U.S. subsidiaries increased by 7 percent in 2012

Employment by Industry



Top Countries Investing in Oregon



46,300

Workers employed by insourcing companies

3.3

Percentage of private-sector workforce

34

Percentage of jobs at insourcing manufacturers

15,800

Number of workers employed by insourcing manufacturers

46

National rank in share of workforce supported by U.S. subsidiaries

597

Total Number of Insourcing Companies

(in-sȯrs-ing) v.

When companies based abroad invest in the United States and create jobs for Americans.

About OFII Created more than two decades ago, OFII is a non-profit business association in Washington, D.C. representing the U.S. operations of many of the world's leading foreign companies, which insource millions of American jobs. OFII works to ensure the United States remains the top location for global investment. As such, OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, increase American employment, and boost U.S. economic growth.

OFII Members in Oregon

- ACE INA Holdings
- Air Liquide USA
- Akzo Nobel
- Alcatel-Lucent
- Anheuser-Busch
- Balfour Beatty
- BASF Corporation
- Boehringer Ingelheim
- BP
- Bunge Ltd
- Bunzl USA
- Daimler
- Diageo
- E.ON North America
- Ericsson
- Evonik
- Ferguson Enterprises
- Flextronics International
- Garmin International
- Hanson North America
- Henkel Corporation
- Honda North America
- Hyundai Motor America
- Iberdrola Renewables
- John Hancock Life Insurance
- Kering
- Marvell Semiconductor
- Novartis Corporation
- Oldcastle, Inc.
- Pearson Inc.
- Philips Electronics North America
- QBE the Americas
- Randstad North America
- Rexam
- Roche Holdings, Inc.
- Sanofi US
- SAP America
- Schneider Electric USA
- Shell
- Siemens
- Solvay America
- Sumitomo Corp. of America
- Syngenta Corporation
- ThyssenKrupp North America
- T-Mobile USA
- TOTAL Holdings USA
- Toyota Motor North America
- Transamerica
- Tyco
- UBS
- Vodafone
- Volkswagen of America
- WPP Group USA, Inc.
- Zurich Insurance Group