Center on Budget and Policy Priorities
820 First Street NE ▪ Suite 510 ▪ Washington DC 20002
(202)408-1080▪ fax (202)408-1056 ▪ center@cbpp.org ▪ www.cbpp.org

February 22, 2018

Representative Phil Barnhart
Representative Greg Smith
Representative Barbara Smith Warner
House Committee on Revenue
Oregon House of Representatives
Via e-mail

Dear Chair Barnhart, Vice-Chairs Smith and Smith Warner, and members of the Committee:

The Center on Budget and Policy Priorities appreciates this opportunity to submit this statement concerning Senate Bill 1529A. The Center is a non-profit, nonpartisan research and policy institute that pursues federal and state policies designed both to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our deep expertise in budget and tax issues and in programs and policies that help low-income people, in order to help inform debates and achieve better policy outcomes.

The Center urges the Committee to amend Senate Bill 1529A to remove the language that would repeal Oregon's requirement that multinational corporations subject to the state's corporate income tax include in the combined reports used to calculate their tax liability subsidiaries doing business in well-known foreign tax havens. There is no necessary connection between this provision, which demonstrably has been effective in nullifying corporate tax avoidance that otherwise would have reduced Oregon's revenue, and the other provision in the bill that seeks to ensure that Oregon does not unintentionally lose revenue from its conformity to the "deemed dividend repatriation" provision of the federal "Tax Cuts and Jobs Act." The latter provision addresses Oregon's response to federal tax treatment of profits that U.S.-based multinational corporations have accumulated abroad in the past through a combination of artificial income shifting and legitimate foreign operations. Repeal of the tax haven provision would strip Oregon of the most effective tool it has available to prevent future artificial income shifting on the part of both U.S.- and foreign-parent corporations doing business in the state based on an evidence-free and likely incorrect assumption that Oregon's piggybacking on the new federal international tax rules will prevent future tax avoidance and loss of revenue.

As you undoubtedly are aware, in a March 2017 study the Legislative Revenue Office reported that the tax haven provision generated approximately $14 million in voluntarily reported additional liability and a roughly equal amount in assessed liability from a single tax year of auditing. While the extent to which those assessments have been challenged is unknown, it seems likely that substantially more revenue will be generated from the tax haven provision over time as the state is able to audit more multinational corporations with nexus in Oregon in successive audit cycles. In short, there is already compelling evidence that the tax haven provision is achieving its goal of ensuring that multinational corporations cannot avoid Oregon income taxes by shifting income to foreign tax haven nations. Even more importantly, there is no longer significant debate that the tax haven provisions of Oregon's and several other states' combined reporting laws inherently remain subject to legal challenge. They are simply less comprehensive versions of worldwide combined reporting (less comprehensive because they include only foreign tax haven subsidiaries and not all foreign subsidiaries), which has been upheld by the U.S. Supreme Court as a fair and legal method of taxing both U.S.- and foreign-parent multinational corporations.

In contrast, the effectiveness of the various new – and very complex – international tax provisions of the "Tax Cuts and Jobs Act" in preventing the artificial shifting of income abroad is clearly speculative because they have only just taken effect. Experts that have evaluated the law have identified numerous opportunities for corporations to game these provisions. (See: Reuven Avi-Yonah et. al, "The Games They Will Play," December 22, 2017; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423). More importantly, there are numerous legal questions concerning both the ability and the means by which states might piggyback on these provisions. For example, questions can and have been raised as to whether some of the new categories of foreign-related income created by the federal legislation can be taxed at all by states, whether they are apportionable to all states in which the corporation is doing business or must be allocated to the headquarters state, and whether and how states must allow corporations to include in their apportionment formulas the sales of the affiliated foreign corporations that generated the income streams. Given these kinds of questions, it is almost inevitable that any attempt by Oregon or any other state to piggyback on the new federal provisions will generate substantial litigation that will take years to resolve. In the meantime, with the tax haven provision repealed, Oregon would return to a state of substantial defenselessness with regard to international tax avoidance.

In sum, it would be extremely premature for Oregon to repeal a demonstrably legal and effective mechanism to protect the state's corporate tax base from artificial international income shifting based on the implicit assumption that the state has the legal ability to piggyback on the new international provisions of the "Tax Cuts and Jobs Act" and that the latter will be effective in achieving the same objective. The Center on Budget and Policy Priorities urges the Committee to amend Senate Bill 1529A to remove repeal of the tax haven provision of Oregon's current corporate tax law.

Sincerely,

Michael Mazerov
Senior Fellow