

SMART GROWTH COALITION

May 2, 2019

Chair Mark Hass
Senate Finance & Revenue Committee
900 Court Street NE
Salem, OR 97301

RE: Policy Considerations for Global Intangible Low-Taxed Income, SB 851

Dear Chair Hass and Members of the Committee,

Thank you for the opportunity to submit additional comments on behalf of the Smart Growth Coalition as the committee nears a policy decision in this area of conformity.

About the Smart Growth Coalition

The Smart Growth Coalition is a consortium of traded sector businesses with significant operations in Oregon. Our coalition was formed in 1999 to add technical expertise to state legislative proceedings regarding proposed reforms to state tax law affecting businesses who have made investments in jobs and capital projects in the state. Our members are unified in their commitment to sound tax policies that encourage local investment in Oregon and provide technical simplicity and clarity to the state tax code.

Policy Options: Comments for SB 851

On April 24, the Legislative Revenue Office presented four policy options for the committee to consider for conforming to global intangible low-taxed income (GILTI). Below are our comments for each of the policy options.

1. **No legislative action addressing a GILTI inclusion.** Taxpayers and the department will be faced with substantial policy uncertainty moving forward. In the absence of statutory direction, there will not be a defined process for including this income in the state tax base. This uncertainty creates an environment ripe for audits, appeals and, ultimately, litigation.
2. **Specify GILTI is included in taxable income and clarify it should be represented in the denominator of the apportionment factor.** If the legislature

SMART GROWTH COALITION

decides to include GILTI in taxable income, effectively opening the water's edge to some foreign operating income, the statute needs to follow the same constitutional principles as income sourced within the water's edge to recognize the foreign factors that produced the income. This may create a significant compliance burden for taxpayers (e.g., tracing sales activity outside the water's edge) and additional complexities for the department. Moreover, including this foreign income in the state tax base could produce counterintuitive revenue results, such as reducing the overall taxes paid by some taxpayers.

3. **Allow the Oregon Dividends Received Deduction (DRD) be applied to GILTI.** Oregon has generally used the DRD as the policy instrument to include foreign income into the state tax base (e.g., Subpart F and §965 income). The deduction is a familiar process for both the department and taxpayers, easing the administrative and compliance burden. If the legislature decides to apply the DRD to GILTI, it is important the statutory language recognize that GILTI is not dividend income despite having similar treatment and represent the foreign factors that produced this income in the sales factor denominator.
4. **Decouple from §951 and all related code sections.** This option is intended to reduce litigation risk. If this is the policy decision, there should be a clearly defined process for taxpayers to remove this income from state taxable income.

There may always be an unavoidable risk of tax litigation for any of these options. This is because the inclusion, by its nature, is a challenge of constitutional norms and will demand the attention of the courts. Due to the uncertainty regarding this area of conformity, the Smart Growth Coalition recommends the committee pursue the option with the least amount of uncertainty and the lowest compliance burden for taxpayers. If the intent of the legislature is to include this income in the state tax base, we believe that option is to apply the Oregon DRD to this new category of income.

Thank you for allowing us to submit these written comments to the record.

Sincerely,

Jeff Newgard
Executive Director