SENATE TAX
Exhibit No. 3
Date 1-23-2015
Bill No. SB 167

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

Senate Taxation Committee Hearing
Testimony on SB 166 and SB 167
January 23, 2015

The Organization for International Investment (OFII) welcomes the opportunity to comment on SB 166 and SB 167. OFII urges legislators to oppose these bills because they would establish tax policies unseen in the United States, positioning Montana as a far less competitive market for attracting foreign direct investment (FDI).

OFII is a business association representing the U.S. subsidiaries of companies headquartered abroad, including many of Montana's largest employers (membership list is attached). OFII aims to position the United States as a competitive location to attract FDI, working with federal and state policymakers on policies that are nondiscriminatory and encourage global employers to invest and create jobs in America.

FDI is critical to Montana's Economic Growth

The U.S. subsidiaries of foreign-based companies are vital to the national economy. These companies employ 5.8 million Americans, or 5 percent of the nation's private sector workforce. These firms have an outsized impact in local communities. For example, U.S. subsidiaries produce 21 percent of U.S. exports, underwrite 15 percent of U.S. innovation efforts, account for 2.2 million manufacturing jobs, and pay salaries 33 percent higher than economy averages.[1]

Montana communities benefit tremendously from the investment these firms bring to the state. 7,200 state residents work directly for a U.S. subsidiary. In fact, Montana saw an 18 percent increase in total FDI jobs from last year, the second largest increase in the country.

OFII concerns with SB 166

OFII adamantly opposes SB 166, which would eliminate the water's edge election when companies file a combined tax return. No other state with combined reporting expands its tax reach in this manner. If adopted, this system would unfairly impose double taxation on non-U.S. businesses that have unitary affiliates in Montana. This approach violates international tax principles and is in conflict with the spirit of bilateral tax treaties.

Additionally, many of our nation's most important trading partners unequivocally oppose this tax approach. California's attempt to adopt worldwide combined reporting in the 1980's incited international condemnation. In 1985, the U.K. passed retaliatory legislation, directing similar tax grabs against companies from states that applied worldwide combination. Additionally, Japanese businesses indicated they would not invest in those states. The U.S. government also sought to

[1] Statistics 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.

curtail such tax policy. Fortunately, California adopted a water's edge election in 1986, and this threat has since remained nonexistent in today's combined reporting systems.

OFII concerns with SB 167

OFII also opposes SB 167, which would add Ireland, Switzerland, and the Netherlands, among other nations, to the state's tax haven list. Income from unitary affiliates incorporated in these so-called tax haven jurisdictions would have to be included in combined returns.

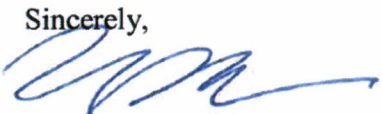
OFII believes labeling countries in this manner is arbitrary and could lead to disputes with other countries, as Ambassadors from these nations have previously voiced. Additionally, companies that simply have an affiliate incorporated in these countries would face uncertainty and potential additional taxation when investing in Montana. The mere fact that a U.S. subsidiary's affiliate is incorporated in a so-called tax haven country does not mean that there is any tax avoidance. It is wrong to assume that U.S. subsidiaries or their affiliates are engaged in tax avoidance activities and thus should be subject to punitive taxation by one U.S. state.

Neither the federal government nor any state has taxed a business just because it is incorporated in Ireland, the Netherlands, or Switzerland. These countries have long been recognized as important U.S. trading partners. FDI from these countries provide 903,000 U.S. jobs, producing over $21 billion in annual exports. Each of these countries have negotiated a tax treaty with the United States. These 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. While states are not bound by U.S. tax treaties, a state should pursue tax approaches that align to our country's obligations under such agreements to ensure it remains competitive for FDI.

Simply put, both SB 166 and SB 167 would position Montana as a sheer outlier in the global economy and carry international implications unseen in current state tax policy. Additionally, they would directly contradict Governor Bullock's attempts to make the state competitive for job creating FDI. Just last week, the Governor hosted a delegation of Chinese companies to "attract foreign direct investment to business projects in the state."[2] For these reasons, we respectfully urge opposition to these proposals.

Thank you for your consideration. Please contact Evan Hoffman, OFII's Senior Manager of State Government Affairs, at ehoffman@ofii.org or (202) 659-1903, for additional information.

Sincerely,



Nancy McLernon
President and CEO
Organization for International Investment

[2] Governor Bullock Press Releases: "Montana Hosts Inbound Chinese Trade Delegation," January 16, 2015

ORGANIZATION *for* INTERNATIONAL INVESTMENT

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.

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