

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

February 24, 2015

The Honorable Debby Barrett
Senate President
Montana Senate
PO Box 200500
Helena, MT 59620-0500

Dear Senate President Barrett,

On behalf of the Organization for International Investment (OFII), I urge legislators to oppose SB 167 because it would threaten Montana's economy and workforce by significantly undermining the state's ability to attract and retain global investment. SB 167 would violate state, federal, and international tax norms, creating a tax system unseen in the United States that will lead to trade disputes with key U.S. trading partners. Such a move would send a strong signal to global companies that their investment and related jobs are not welcomed in Montana.

Specifically, the bill would add Ireland, Switzerland, and the Netherlands, among other countries, to the state's tax haven list. The implications of the bill would impose an extraterritorial double tax on any global company with affiliates in these nations. Of note, the United States has negotiated tax treaties with each of these three countries, which are some of America's most important trading partners and the source of a significant amount of foreign investment in the United States.

Top-line concerns with SB 167 (each is described in more detail below):

- **Hurts state's efforts to attract and retain foreign direct investment (FDI)**
- **Damages Montana's competitiveness**
- **Penalizes legitimate business activities**
- **Violates spirit of bilateral tax treaties**
- **Invites retaliatory legislation from other countries aimed at Montana companies**
- **Erects future barriers for unknown investment flows**
- **Leads to U.S. Constitution disputes**
- **Increases taxpayer costs**

OFII is a business association representing the U.S. subsidiaries of companies headquartered abroad, including many of Montana's largest employers (membership list attached). OFII works to position the United States as the most attractive destination for 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 on 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.

Montana benefits tremendously from the investment these firms bring to the state. Insourcing companies employ 7,200 state residents, with a quarter of these jobs in the manufacturing sector.

Further, Ireland, the Netherlands, and Switzerland are some of America's largest trading partners and key sources of FDI that supports jobs across the country. Firms from these countries provide more than 1 million U.S. jobs, produce more than \$34 billion in annual exports, and are responsible for nearly a quarter of cumulative FDI from Europe into the U.S.

OFII concerns with SB 167

OFII has significant concerns with SB 167 and the precedent the bill would set. These concerns are outlined below:

- **Hurts state's efforts to attract and retain foreign direct investment:** This tax policy would misalign with the state's economic development goals to attract investment from any nation on this list. It is a clear, discriminatory barrier to Governor Bullock, or any future Governor, trying to promote Montana as an attractive market to any of these nations on the list. 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.
- **Damages Montana's competitiveness:** Montana is one of two states with a tax haven list, and no other state has ever deemed Ireland, the Netherlands, or Switzerland tax havens. SB 167 would hurt the state's ability to compete for investment from these countries compared to neighboring states.
- **Penalizes legitimate business activities:** The tax haven list approach assumes all affiliates operating in so-called tax havens are abusive tax evaders. However, the mere fact that a foreign affiliate is incorporated in one of these countries does not mean that there is any tax avoidance. Companies would be penalized simply because they operate in these foreign nations, even if their operations in these jurisdictions are reflective of legitimate business purposes, like manufacturing products, engaging in research and development, streamlining supply chains, or reaching new customers.
- **Violates spirit of bilateral tax treaties:** The Netherlands, Ireland, and Switzerland have tax treaties with the United States. 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. SB 167 would tax income (e.g. royalties and interest) protected from federal taxation because of these treaties.

- **Invites retaliatory legislation from other countries aimed at Montana companies:** Since pursuit of this income by the state would undermine the U.S. treaty network, this perceived encroachment could lead to retaliation by the U.S.' trading partners. In the 1990s, when California looked to include income of non-U.S. companies, many countries, including Japan and Canada, called for significant retaliatory actions. The United Kingdom went so far as to enact retaliatory legislation. This bill is not so far-removed from California's policy.
- **Erects future barriers for unknown investment flows:** The blacklist approach closes doors to future investment from these nations. It is impossible to predict where the next billion dollar investment will originate from, including from firms resident in deemed tax havens.
- **Leads to U.S. Constitution disputes:** The Supreme Court has previously struck down state laws that frustrate Congress' 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). Montana'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.
- **Increases taxpayer costs:** This policy would lead to extraterritorial double taxation for multinational groups that operate in Montana as non-U.S. corporations would be paying tax twice on the same income flows – to Montana and to the countries in which they are located.

For these reasons, we urge opposition of SB 167.

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

CC: Senate President Pro Tempore Eric Moore
Senate Majority Leader Matt Rosendale
Senate Majority Whip Ed Buttrey
Senate Majority Whip Cary Smith
Senate Taxation Committee Chair Bruce Tutvedt
Senator Brian Hoven
Senator Duane Ankney

Global Investment Grows America's Economy

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Montana

Capital: Helena

Population: 1,005,141

State Insourcing Jobs: 7,200

Private Sector Workforce Due to Insourcing Totals: 2%

Manufacturing Jobs: 1,800

Montana

Insourcing (in-sôrs-ing) v.

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

FAST FACTS:

U.S. subsidiaries of global companies play a vital role in Montana's economy, insourcing 7,200 jobs; writing paychecks to 2 percent of Montana's private-sector workforce.

25 percent of jobs at U.S. subsidiaries in Montana are in the manufacturing industry-accounting for 1,800 jobs.

Select a State

Map

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Insourcing News

[Seduced By The False Promise of Buy American Laws](#)

[N.J.'s economy helped by global companies: Opinion](#)

[Businesses oppose 'Buy American' bill as Assembly vote nears](#)

Unless noted otherwise, statistics are the latest publicly available government data from the Bureau of Economic Analysis, <http://www.bea.gov/>

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- Alcatel-Lucent
- Anheuser-Busch
- Barrick Gold
- Boehringer Ingelheim
- BP
- Bunge Ltd
- Ericsson
- Ferguson Enterprises
- Flextronics International
- GlaxoSmithKline
- Holcim (US) Inc.
- John Hancock Life Insurance
- Novartis Corporation
- Oldcastle, Inc.

- Pearson Inc.
- QBE the Americas
- Reed Elsevier
- Sanofi US
- Schneider Electric USA
- Shell
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About OFII

Created more than two decades ago, the Organization for International Investment (OFII) is a non-profit business association in Washington, D.C. representing the U.S. operations of many of the world's leading global 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.

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