OFII State Tax Issues

Updated July 2014

State Tax Issues 2014

State	Description	OFII Action	Status
New York	**Add-back Requirement**: Governor Cuomo's proposed Fiscal Year 2014-2015 Budget included a provision to strike the tax treaty exception from the related party royalty add-back requirement. Without the tax treaty exception, U.S. subsidiaries would have to add-back all cross-border royalty expense when calculating taxable income in NY. This would cause extraterritorial double taxation.	OFII filed testimony with the legislature and met with the state's Budget and Tax departments. OFII also sent a letter addressing concerns. OFII led a grassroots effort engaging approximately 30 companies or third parties to voice concern directly to the Governor's office.	**Issue resolved favorably:** The Governor released his 30 day amendments on February 20. One of his amendments reinstated the tax treaty exception into the budget. In April, the legislature passed the budget agreement, which included the tax treaty exception.
Maryland	**Combined Reporting:** Identical to 2013, Senator Paul Pinsky (D) sponsored legislation (SB 395) that would implement combined reporting. The bill would alter water's edge methodology. A company's combined group would potentially include income received by its foreign affiliate if the income was "derived from or attributable to sources within the United States and [the related] factors assignable to locations within the United States. Identical bills were also introduced as HB 1298 and HB 887. These bills would result in extraterritorial double taxation of non-U.S. companies that have no operations in the United States but receive income from Maryland affiliates.	OFII submitted testimony opposing each of the three measures and worked with other third parties to oppose this legislation.	**Issues resolved favorably:** None of the combined reporting measures moved from Committee before the legislature adjourned. All three measures are dead.

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Maine	**<u>Tax Havens:</u>** Rep. Adam Goode (D) introduced a bill (LD 1120) that would adjust a corporation's "net income" to include the taxable income or loss of its unitary affiliates that are incorporated in 38 listed jurisdictions. OFII member companies with unitary affiliates in the listed jurisdictions would potentially face an increase in Maine taxes. The proponents of the bill launched a multi-week targeted media effort to build support for this legislation. The bill passed the legislature in late April on a party-line vote.	OFII led efforts to oppose this legislation, sending letters to every state legislator. OFII worked with the local Chamber of Commerce, Maine BIO, and the Council on State Taxation to oppose this bill. OFII also wrote a letter to the Governor urging opposition and placed an op-ed in local press explaining why tax haven legislation is misguided.	**Issue resolved favorably:** On April 28, Governor Paul LePage (R) vetoed the measure. In his veto letter, the Governor said the "bill departs from that well-established "water's edge" method of corporate taxation" and illustrates Democrats' desire to "drive Maine into an economic wilderness and kill existing and future jobs." Republican legislators sustained the veto on May 1, officially killing the measure.
Rhode Island	**<u>Combined Reporting:</u>** Legislators explored whether the state should enact combined reporting. The Senate Finance Committee began by reviewing legislation (S.2988) that would enact combined reporting, reduce the corporate tax rate from 9% to 7%, remove the add-back requirement for interest and intangible expense, and adopt single sales apportionment. The bill includes water's edge reporting except for payments to countries deemed a tax haven by the state.	OFII held a series of meetings in Rhode Island with state legislators to explain why legislators should respect a "true" water's edge boundary. OFII offered to be a resource and provided state legislators with model language that respects a true water's edge boundary. Most of OFII's recommended language was included. Additionally, OFII testified against tax haven policy and worked with legislators on language that would ensure tax treaty protection and prevent double taxation of payments resulting from legitimate transactions, even if paid to affiliates in tax havens.	**Issue resolved favorably:** OFII's recommended legislative language was added to the state's Budget proposal (OFII language is on pages 176-177), which became law. The language allows state tax authorities to pursue abusive transactions, but prevents extraterritorial taxation of arms-length related party payments.

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Tax Haven Legislation 2014	**Tax Havens**: Measures were introduced in Massachusetts (Budget Amendment 1142), Minnesota (HF 1440), West Virginia (HB 4586), and Wisconsin (AB 844). Such measures take one of two forms: 1) labeling specific countries as tax havens 2) subjectively defining attributes of tax haven jurisdictions, without labeling specific countries. The bills' proponents in each state cited the U.S. Public Interest Group (US PIRG) report entitled "The Hidden Cost of Offshore Tax Havens." In the report, US PIRG urges states to enact tax haven policy, claiming such efforts would close a multi-billion dollar loophole.	OFII is continuing to monitor debate surrounding these proposals and engage on those measures that are threats to move.	**West Virginia HB 4586**: The bill did not move from Committee before the legislature adjourned for the year. **Massachusetts Budget Amendment 1142**: It was withdrawn from Budget consideration on April 28. **Wisconsin AB 844**: The bill did not move from Committee before the legislature adjourned for the year. **Minnesota HF 1440**: The bill did not move from Committee before the legislature adjourned for the year.
Audit Concerns 2014 *Often times, state tax authorities will exert extraterritorial taxation through audit. Whether the state claims nexus or denies addback exceptions, cross border income flows between U.S. subsidiaries and their foreign affiliates would be subject to double tax.*	The following three concerns have been identified by OFII member companies; **Alabama**: Tax authorities are attempting to deny an addback exception for cross-border related party interest expense. **Massachusetts**: Tax authorities are attempting to impose a net worth excise tax over non-U.S. companies by claiming nexus, a position resulting from the use of intangibles by local U.S. affiliates. **Washington:** Tax authorities are attempting to subject non-US companies to the Washington Business & Occupation (B&O) tax because of their receipt of royalty income attributable to local U.S. affiliate sales.	OFII tracks and monitors state audit activities that violate international tax norms, misalign with the principles of bilateral tax treaties, and cause double taxation for OFII member companies.	At this point, OFII is monitoring these efforts, gathering intelligence, but is not taking direct action. As such, please let OFII know if your company is currently facing or has experienced similar audit challenges by these states, or in other states.

State Tax Issues 2013

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Arkansas	**<u>Unitary Combined Reporting</u>**: In March 2013, Representative Jim Nickels (D) introduced HB 1845, a proposal that would establish mandatory unitary combined reporting in the state. The proposal would expand the state's water's edge group to U.S. source income, cross border intangible payments, and income received by companies doing business in a "tax haven." The proposal would impose double taxation and violate international taxation norms.	OFII sent a comment letter to Chairman Charlie Collins (R) of the House Revenue and Taxation Committee opposing this proposal. Click here to view OFII's comment letter. OFII worked closely with the Arkansas Chamber of Commerce to oppose this legislation.	**Issue resolved favorably.** HB 1845 died in committee this session. Earlier reports indicated that House Republicans were considering implementing combined reporting as a way to pay for a proposed income tax cut. However, support for this proposal waned after OFII and others in the business community were able to raise concerns.
Montana	**<u>Unitary Combined Reporting:</u>** Senator Dick Barrett (D) introduced legislation (SB 208) that would completely remove the state's water's edge provision for combined reports and enact worldwide combined reporting. **<u>Tax Havens:</u>** Senator Dick Barrett (D) also introduced SB 309, a proposal that would brand countries including Ireland, the Netherlands, and Switzerland as "non-exempt" countries and remove water's edge protections for businesses incorporated in those nations.	OFII sent letters to each member of the Senate Taxation Committee urging opposition to both proposals. Both would impose double taxation on non-U.S. companies and violate international tax norms. OFII worked closely with the Montana Chamber of Commerce, the Montana Taxpayers Association, the Council of State Taxation, and relevant embassies to oppose this legislation.	**Issues resolved favorably.** Both SB 208 and SB 309 were tabled and failed to move from committee before the Montana legislature adjourned for the year.

State	Description	OFII Action	Status
Maryland	**Unitary Combined Reporting:** Senator Paul Pinsky (D) sponsored legislation (SB 469) that would implement combined reporting. The bill would alter traditional norms of water's edge methodology. A company's combined group would potentially include income received by its foreign affiliate if the income was "derived from or attributable to sources within the United States and [the related] factors assignable to locations within the United States. This provision would result in extraterritorial double taxation on non-U.S. companies that have no operations in the United States but receive income from their affiliates in Maryland.	OFII submitted testimony for a Senate Budget and Taxation Committee hearing on SB 469 and for a House Ways and Means Committee hearing on companion legislation (HB 1246). OFII worked closely with the Maryland Chamber of Commerce to oppose this legislation.	**Issue resolved favorably.** Both SB 469 and its companion bill died in committee. Proposals that have sought to enact combined reporting have failed to move in Maryland for approximately eight straight years.
Oregon	**Tax Havens:** Legislation was introduced (HB 2460) that would target companies doing business with an affiliate in a tax haven. Section 2 would require companies to add to their federal consolidated taxable income any gain or loss from a unitary company incorporated in approximately 40 selected jurisdictions, a list similar to what is found in Montana's "tax haven" statute (see Section 15-31-322(f)). **Related Party Addback**: Legislation (HB 3069) was introduced that would change the state's related party addback. OFII member companies would no longer have to add back intangibles paid to related members.	**Tax Havens:** OFII sent a letter to state senators urging removal of the harmful section should the proposal be considered alone or as part of a larger tax or budget package. OFII believes the principle of claiming state tax jurisdiction over selected "tax havens" is inconsistent with international tax norms and could lead to double taxation on non-U.S. companies and disputes with our trading partners. **Related Party Addback:** OFII did not engage on this legislation, but supports proposal that alleviate any potential for extraterritorial taxation.	**Issue resolved unfavorably.** **Tax Havens:** The bill passed the state legislature and was signed by Governor Kitzhaber on August 1, 2013. The list includes countries like Luxembourg and Bermuda. This proposal had widespread support among Democrats, and reports indicate that state Republicans agreed to it as part of a larger tax and budget deal. **Issue resolved favorably.** **Related Party Addback:** The legislation passed the state legislature and was signed into law on June 24. Click here to read a PwC summary for additional details.