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February 24, 2016

The Honorable Lois Court, Chair
House Finance Committee
Colorado State Legislature
State Capitol
Denver, Colorado

Re: HB 16-1275

Dear Chair Court:

I am writing this letter to provide information relevant to and in support of HB 16-1275 intended to curb corporate tax avoidance through profit shifting to foreign tax havens. By way of introduction, I served as Montana Director of Revenue from January 2005 until January 2013. I also served as Executive Director of the Multistate Tax Commission (MTC) from 1988 through 2004. Colorado is a member of the MTC, and it was an honor to serve the State of Colorado through that work.

In these prior positions, I was actively engaged in addressing the challenge of corporate international income shifting. In Montana, I was responsible for administering that state's tax haven law originally enacted in 2003. Further, in 2007 the European Commission invited me to advise on corporate tax issues related to the use of formula apportionment to properly divide income among nations.

Profiting shifting to tax havens is the greatest inequity in the federal and state corporate tax system. Conservative estimates place the loss of revenue annually in the range of \$90 billion or more for federal taxes and \$20 billion for the states collectively. I consider those estimates to be conservative. Those revenue losses represent unfair gains by large multinational corporations at the expense of all other taxpayers.

The guiding principle of state corporate taxes is that such taxes should be generally proportionate to the business activities a corporation conducts in a state. The reason is that a state provides public services that benefit a corporation to the extent of its business activities there. Based on this principle, if 5% of a corporation's total business activities are in Colorado, approximately 5% of its income should be reported to and taxed in the state. That's only fair because a Colorado-only business conducts 100% of its activities in the state and is responsible for reporting 100% of its income to the state. However, when a multinational shifts profits earned in Colorado to an overseas tax haven, it can unfairly reduce its income to something far below the share of its business activities it conducts in Colorado—even to the point of reporting little or no income at all. A business operating solely or primarily in Colorado is unable to avoid taxes in this manner.

This inequity is not simply an affront to tax fairness. It is also likely to cause economic harm to the Colorado economy. A recent report of the Center for Budget and Policy Priorities documents that a large majority of jobs—on average 87% from 1995-2013—are created by “homegrown businesses.”¹ Homegrown businesses are those that start up or are already based in Colorado. The report found that out-of-state companies expanding into a state created only a small majority of jobs. Allowing multinationals to avoid Colorado taxes through tax havens rewards companies least likely to create Colorado jobs and penalizes homegrown Colorado businesses that do create a substantial share of jobs. In these terms, closing off-shore tax haven loopholes makes economic sense.

I also wish to share some observations relevant to HB 16-1275 based on Montana’s experience with its tax haven law.

Montana’s law has been in effect since 2003. Administratively, there were no noticeable costs or challenges associated with the implementation or enforcement of the law during my tenure as Director of Revenue. Further, I received no complaints from corporate taxpayers about the law, its implementation and or its impact.

Montana is a worldwide combined reporting state, with an option for corporations to report on a water’s edge basis. With the water’s edge election comes the obligation for corporations to include tax haven income in the Montana tax calculations. If corporations viewed the tax haven law as burdensome, one would have expected not only complaints, but also a reduced number of corporations electing water’s edge treatment. The opposite was the case. From TY 2004 (first year the law took effect) to TY 2011, the number of water’s edge electing corporations nearly tripled from 109 to 312.

As to economic impacts, there is no evidence of any negative economic impact on the state from the tax haven law. From 2004 forward, the Montana economy fared better than the rest of nation. Unemployment rates were lower in Montana than for the U.S. Montana unemployment in December 2015 was at 4.0% compared to the national rate of 5.0%. The Great Recession affected Montana less than the rest of the nation and for a shorter period. General fund fiscal balances from 2005 and thereafter were often at historically high levels.

Again, as Director I received no indications or contacts from corporations considering investments in Montana that their plans would be affected by the tax haven law. The law was also never a point of discussion with our economic development agencies as having any relevance whatsoever to any prospective investment in Montana.

The only complaints we received were from a few nations either on the tax haven list or proposed to be added to it. These nations took exception to the idea that Montana would list them as a “tax haven.” They expressed concerns about a negative impact on their national reputation. They could not identify any real, substantive effect of the tax haven listing. I did not consider the complaints credible because each of the nations had been previously listed as a tax haven in numerous governmental and press reports, including reports by the U.S. General Accountability Office, the Congressional Research Service, the U.S. Permanent

¹ Michael Mazerov and Michael Leachman, “State Job Creation Strategies Often Off Base,” Center on Budget and Policy Priorities, February 3, 2016.

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Subcommittee on Investigations, the New York Times, Bloomberg News and elsewhere. Internet searches revealed that these nations were also listed on web sites critical of tax havens and on web sites advertising services to taxpayers seeking to hide income in those and other jurisdictions. How the listing by a U.S. state of a nation as a tax haven could have any further effect on the national image or reputation of one or more of these countries was difficult to understand.

In my judgment, taking action to curb profit-shifting to tax havens by multinational corporations is a prudent and sensible step in economic and fiscal terms. Most importantly, it helps advance the goal of fundamental fairness in taxation.

Thank you for your consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan R. Bucks". The signature is written in a cursive style with a large initial "D".

Dan R. Bucks

Former Montana Director of Revenue (2005-2013)