

# Tax haven and worldwide reporting legislative proposals

March 11, 2015 (Updated)

## In brief

There have been many state legislative proposals in recent months that impact international business organizations doing business in the US. Various forms of tax haven laws are already enacted in Alaska, D.C., Montana, Rhode Island, Oregon, and West Virginia. This legislative session we have seen Alabama, Florida, Kentucky, Maine, Massachusetts, and New Hampshire introduce tax haven bills while Oregon attempts to broaden its tax haven laws.

We will update this Insight on a regular basis to provide you with current information regarding these and other legislative proposals. Please [click here](#) to access current status of the bills indicated below.

## In detail

A typical state tax haven statute requires a non-US entity *doing business* or *incorporated* in a 'tax haven' country to be included in an otherwise water's-edge unitary or separate company return. A tax haven country may be defined through application of a several considerations, such as whether the country: imposes an income tax at a certain rate, has a tax regime that lacks transparency, or has created a tax regime favorable for tax avoidance (Alaska, D.C., and West Virginia have this type of tax haven statute). Alternatively, a state may provide of list of tax haven countries in its statute (e.g., Montana and Oregon). Rhode Island has enacted its own unique tax haven law.

Current tax haven legislative proposals are summarized below.

### **Alabama – New tax haven legislation**

Introduced on March 5, 2015, [H.B. 142](#) would adopt mandatory combined reporting. A combined group would include the entire income and apportionment factors of any member that is 'doing business' in a tax haven.

A tax haven is not defined by a list of jurisdictions. A tax haven is defined as a jurisdiction that has "no or nominal effective tax on the relevant income" and that satisfies other factors including having laws that prevent tax transparency, having a tax regime that prevents information exchange, or having created a tax regime

favorable for tax avoidance. The bill would be applicable for tax years beginning after December 31, 2014.

### **Florida – New tax haven legislation**

Introduced on March 2, 2015, Florida [H.B. 1221](#) would adopt water's-edge combined reporting. A combined group would include corporations that are incorporated in a tax haven.

A tax haven is a jurisdiction that: (1) is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime, or (2) imposes no or nominal effective tax on relevant income, has laws that prevent the effective exchange of tax information, lacks transparency, facilitates the establishment of

foreign-owned entities without the need for a local substantive presence, excludes resident taxpayers from taking advantage of the tax regime's benefits, or has created a tax regime that is favorable for tax avoidance.

The relevant provisions would be applicable for tax years beginning on or after January 1, 2016.

On March 8, 2015, the bill was referred to the Finance and Tax Committee.

### **Kentucky - New tax haven legislation**

Introduced on February 9, 2015, [H.B. 374](#) would require combined reporting. The bill provides that, for tax years beginning on or after January 1, 2016:

- the entire income and apportionment factors of an entity 'doing business' in a tax haven would be included in the combined group
- a transaction with an entity incorporated in a tax haven (or with an entity lacking economic substance, including an entity lacking a valid non-tax business purpose) would be considered a reportable transaction, which would require disclosure to the state
- any 'tax benefit' accruing from a transaction with an entity incorporated in a tax haven would be disallowed
- income resulting from a transaction with an entity incorporated in a tax haven would be included in the computation of gross income and subject to apportionment.

The bill provides that tax haven jurisdictions would be:

Andorra, Anguilla, Antigua, Aruba, The Bahamas, Bahrain, Barbados, Barbuda, Belize, Bermuda, British Virgin Islands, Caicos Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Grenadines, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Nevis, Niue, Panama, Samoa, San Marion, Seychelles, St. Kitts, St. Lucia, St. Vincent, Turks, U.S. Virgin Islands; and Vanuatu.

The bill was posted in committee on February 24, 2015.

A related bill, [H.B. 132](#), was introduced on January 6, 2015. On January 8, 2015, the bill was assigned to the Appropriations and Revenue Committee.

### **Maine - New tax haven legislation**

Introduced on February 10, 2015, [L.D. 341](#) provides that, applicable for tax years beginning on or after January 1, 2016, 'net income' includes the taxable income or loss of a unitary group member incorporated in one of the following jurisdictions:

The Principality of Andorra, Anguilla, Antigua and Barbuda, Aruba, the Commonwealth of the Bahamas, the Kingdom of Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, the Republic of Cyprus, the Commonwealth of Dominica, Gibraltar, Grenada, the Bailiwick of Guernsey, the Republic of Ireland, the Isle of Man, the Bailiwick of Jersey, the Republic of Liberia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, Malta, the Republic of the Marshall Islands, the Republic of Mauritius, the Principality of Monaco,

Montserrat, the Republic of Nauru, the Caribbean Netherlands, Niue, the Independent State of Samoa, the Republic of San Marino, the Republic of Seychelles, the Federation of St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the United States Virgin Islands or the Republic of Vanuatu.

A public hearing on the bill occurred on March 9, 2015.

Governor LePage vetoed similar legislation, [L.D. 1120](#), on April 28, 2014.

### **Massachusetts – New tax haven legislation**

House Docket 1234 would include as a member in a Massachusetts combined report those entities incorporated in one of the following jurisdictions:

Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Mauritius, San Marino, Seychelles, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Switzerland, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

Note that this list includes Switzerland, which is not included as a tax haven in any enacted state tax law.

H.D. 1234 also proposes that the commissioner may require a water's-edge taxpayer to submit a domestic disclosure spreadsheet to "provide full disclosure of the income reported to each state for the year, the tax liability

for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge group and those of its United States affiliated corporations." The commissioner may require disclosure of the same information for income reported to tax havens.

A companion docket, S.D. 1699, provides a similar tax haven list except that the Netherlands is also included as a tax haven jurisdiction. Both bills are awaiting committee assignment, when they likely will be assigned different bill numbers.

***Montana – Including Switzerland, Ireland, and the Netherlands as tax havens***

Introduced on January 16, 2015, [S.B. 167](#) would add Switzerland, Ireland, the Netherlands, Guatemala, Hong Kong, Trinidad, and Tobago to its list of tax havens. The bill would be applicable to tax years beginning after December 31, 2014. The bill was tabled in committee following a February 25, 2015, hearing.

***New Hampshire – New tax haven legislation***

Introduced on January 8, 2015, [H.B. 551](#) would, applicable to tax periods ending after December 31, 2014, include unitary members in a combined return that are incorporated in one of the following jurisdictions:

The Principality of Andorra, Anguilla, Antigua and Barbuda, Aruba, the Commonwealth of the Bahamas, the Kingdom of Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman

Islands, the Cook Islands, the Republic of Cyprus, the Commonwealth of Dominica, Gibraltar, Grenada, the Bailiwick of Guernsey, the Isle of Man, the Bailiwick of Jersey, the Republic of Liberia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, Malta, the Republic of the Marshall Islands, the Republic of Mauritius, the Principality of Monaco, Montserrat, the Republic of Nauru, the Caribbean Netherlands, Niue, the Independent State of Samoa, the Republic of San Marino, the Republic of Seychelles, the Federation of St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the United States Virgin Islands, and the Republic of Vanuatu.

A committee hearing regarding the bill was held on February 20, 2015. Bill status provides that the bill is scheduled for a floor date on March 11, 2015.

***Oregon – Including the Netherlands as tax havens***

Introduced on January 12, 2015, [H.B. 2099](#) would add the Netherlands, Guatemala, Hong Kong, Trinidad, and Tobago to Oregon's tax haven list. Changes would be applicable for tax years beginning on or after January 1, 2015. The bill is assigned to the Revenue Committee. A public hearing was held on February 26, 2015.

A companion bill, [S.B. 61](#), is assigned to the Finance and Revenue Committee. A public hearing was held on February 9, 2015.

***In detail - Mandatory worldwide reporting***

***Montana***

Introduced on January 16, 2015, [S.B. 166](#) proposes to eliminate Montana's water's-edge election, which would make Montana a mandatory worldwide unitary combined state.

On February 19, 2015, the bill failed to move out of committee on a 5-5 vote. The bill remains in committee.

## ***Let's talk***

If you have questions regarding any of the bills mentioned above, please contact a member of [PwC's State Legislative Services group](#) or PwC's SALT Inbound Team.

### ***State Legislative Services***

Bryan Mayster  
Managing Director, *Chicago*  
+1 (312) 298-4499  
[bryan.mayster@us.pwc.com](mailto:bryan.mayster@us.pwc.com)

### ***State and Local Tax Inbound Team***

Todd Roberts  
Partner, *Denver*  
+1 (720) 938-9191  
[todd.roberts@us.pwc.com](mailto:todd.roberts@us.pwc.com)

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