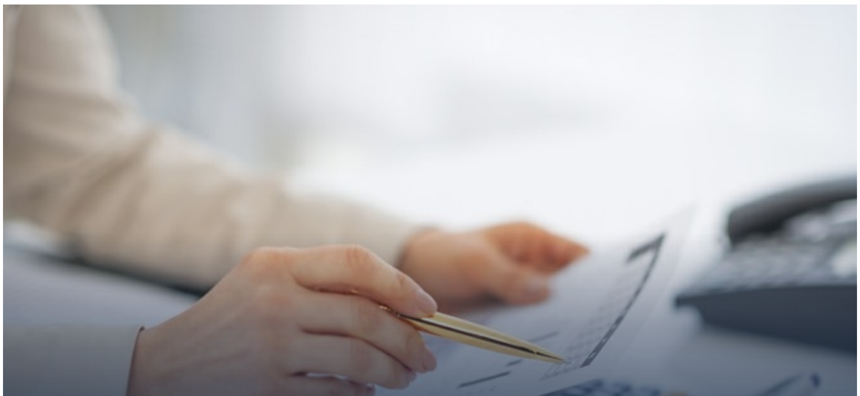

No stairway to haven – House passes anti-tax haven bill to boost revenue in Oregon

DAVID KALL | TAX AND BENEFITS CHALLENGES | JUN 07, 2013

Increasingly, national attention has focused on those who are perceived as not paying their “fair share” of income taxes. Most recently, national attention shifted to Apple, Inc. (Apple) when a congressional committee asked Apple CEO Tim Cook to testify on the company’s offshore tax practices. No wrongdoing was found. However, the use of so-called offshore tax havens appears to be an emerging area for regulatory scrutiny as politicians seek to raise additional revenue (and the opportunity to raise his or her political stature). According to Michigan Senator Carl Levin, U.S.-based multinational corporations have managed to shield an estimated $1.9 trillion in profits from U.S. taxes through the use of these offshore tax havens.

In what may only be a signal of things to come at the state level, the State of Oregon took steps late last month to end tax avoidance through the use of tax havens. A unanimous Oregon House of Representatives voted in favor of a law, H.B. 2456, created to crack down on offshore tax havens, potentially raising approximately $20 million in tax revenue.

H.B. 2456 states that “if a corporation required to make a return under [Oregon law] is a member of an affiliated group of corporations making a consolidated federal return…the corporation’s Oregon taxable income shall be determined beginning with federal consolidated income of the affiliated group[.]” An “affiliated group” is a number of different corporations which, for purposes of filing tax returns, is considered one entity. This “affiliation” is generally predicated on high interrelatedness of activities between the many corporations and common control.

The bill further states that “for purposes of determining Oregon taxable income, the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in any of the following jurisdictions shall be added to federal consolidated taxable income.” The Oregon bill then lists a number of territories. If a member of the Oregon taxpaying entity’s unitary group is incorporated in one of those territories, then any income from those territories would be added back to the federal consolidated income figure used as a basis in determining the taxpaying entity’s Oregon taxes. This list of territories includes Aruba, the Bahamas, the British Virgin Islands, and the Cayman Islands, to name a few.

The effect of H.B. 2456 would be to turn various offshore tax haven approaches that are effective under federal (and generally state laws) on their head, at least in Oregon. For example, presently if a company registered in Oregon owns a corporation with assets in Aruba that were sufficiently disconnected from Oregon, Oregon would not have required that company to declare the assets or income from the Aruba corporation in the company’s Oregon tax returns. Under H.B. 2456 in that same situation, the Oregon company would likely be required to include income and assets from the Aruba corporation in its Oregon tax returns. Under H.B. 2456, incorporating in a targeted country, such as Aruba, would not necessarily shield these types of assets or income.

Of course, this analysis rests upon the assumption that constitutionally-sufficient nexus exists between Oregon and such corporation incorporated in one of the enumerated offshore tax havens. The main idea behind H.B. 2456, however, is that if there is sufficient nexus between activities of a corporation in Oregon and assets or income in an offshore account, such as Aruba, Oregon will require those assets and income to be recognized in an Oregon tax return.

H.B. 2456 is currently in the Oregon State Senate, where it is believed the bill will be part of a broader bipartisan tax deal. It is very possible additional states will follow suit and attempt to pass anti-tax haven laws, as closing such offshore tax haven loopholes not only increases tax revenue, but it protects politicians by enabling them to avoid raising taxes on regular citizens while raising revenue.

Click here to read the text of H.B. 2456.

DAVID KALL

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