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MEASURE: HB 2535
EXHIBIT: D
HOUSE REVENUE COMMITTEE
DATE: 2/3/2011 PAGES: 3
SUBMITTED BY: DENNIE WHEELER

February 2, 2011

House Revenue Committee
900 Court Street NE
Room 143
Salem, OR 97301

Re: February 3, 2011 Public Hearing on House Bill 2535

Dear Members of the House Revenue Committee:

My name is Dennie Wheeler. I have been continuously licensed as an Oregon Certified Public Accountant since 1977 and am admitted to practice before the United States Tax Court. To the best of my knowledge, I am one of only three non-attorneys in Oregon entitled to practice in that court. My professional activities are preparation of tax returns, tax planning, representing taxpayers in tax controversies, writing and presenting continuing education classes. I felt quite honored that the Oregon Department of Revenue selected me to teach a total of 32 class hours of partnership tax law to its staff in 2007 and 2008. I am writing this letter to and testifying before the House Revenue Committee of my own volition. No person or organization is compensating me or reimbursing my traveling expenses.

I wish to strongly encourage the House Revenue Committee to:

- Please give House Bill 2535 a prompt and high priority, with a “do pass” recommendation; even if the suggestion in the next bulleted point is not adopted.
- Modify the bill in a manner, which I believe will offer the Oregon Department of Revenue more flexibility in tax administration, achieve a closer connection of the bill’s objection of reconnecting Oregon income tax law with federal income tax law, and be fairer to both taxpayers and the State of Oregon.

Each of the bulleted points is discussed under separate headings below.

PROMPT AND HIGH PRIORITY OF HB 2535 WITH A “DO PASS” RECOMMENDATION

A succinct summary of House Bill 2535 is that it re-connects much of Oregon state income tax law to federal income tax. Speaking as a long-time tax practitioner, I feel House Bill 2535 would benefit taxpayers and tax practitioners in the following ways:

1. With only one set of tax laws applicable to the majority of transactions, taxpayers and tax practitioners would be relieved of the burden of trying to simultaneously comply with two differing sets of laws.
2. Taxpayers would benefit because fees they pay to tax practitioners would be less. Tax practitioners would also benefit because the reduced time and effort required to prepare each Oregon income tax return will make more time available to serve other clients.
2. More taxpayers would be able to prepare their own individual income tax returns without incurring the expense of professional help.
3. Oregon tax returns will almost certainly have fewer errors and inadvertent omissions.
4. Tax planning is made easier by the bill's prospective connection with federal income law. From my practice experience, taxpayers can be very reluctant to make significant investments when they are uncertain whether Oregon tax law will differ from future federal tax laws. Without business investment, new job creation is less likely.

I also firmly believe that the Oregon Department of Revenue and the State of Oregon will benefit from reconnecting Oregon income tax law with federal income tax law. The tasks assigned to the Oregon Department of Revenue would obviously be efficiently performed, and probably with fewer errors, if that agency's personnel are not required to know and apply two sets of laws.

Due to the wide-reaching and important impacts of House Bill 2535, I urge the House Revenue Committee to give prompt attention to this bill. If the Oregon Legislature can enact it quickly, then the Oregon Department of Revenue can implement it sooner, taxpayers will no longer have to delay filing their tax returns in anticipation of what the Legislature might or might not do about reconnected Oregon and federal income tax laws, and tax practitioners can better serve their clients and more quickly provide tax return preparation to them.

SUGGESTED MODIFICATION TO HOUSE BILL 2535

I would like to respectfully suggest a change to Sections 21 and 22 of the bill. Those sections of the bill would amend ORS 314.011 and ORS 315.004, respectively. Subsections (3) in each of the cited Oregon Revised Statutes are identical. My suggestion is to amend those subsections (3) as indicated in the next paragraph. The paragraph below uses **bold face type to indicate suggested additions** and [*bracketed italic type to indicate suggested deletions*].

(3) Insofar as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall [*follow the rule observed by the United States Commissioner of Internal Revenue*] **have the discretion to apply**

either the opinion of a federal court in which an Oregon residence would have the right to litigate or to apply the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer.

Present law constrains the Oregon Department of Revenue to follow only the Internal Revenue Service view; even if a federal court opinion that is precedent for an Oregon resident would apply for federal income tax purposes. Since the spirit of House Bill 2535 is to reconnect Oregon income tax law to federal income tax law, enacting the suggested change would enable to Oregon Department of Revenue to administer Oregon's income tax law exactly as it would be administered for federal income tax purposes, without violating an Oregon Revised Statute. Under present law, the Oregon Department of Revenue must apply the Internal Revenue Service interpretation, which forces taxpayers to petition the Oregon Tax Court, resulting in additional time, effort, and expense for all concerned despite having a federal court precedent that would apply to Oregon residents.

Please note that the suggested change would still permit, but not require, the Oregon Department of Revenue to apply the Internal Revenue Service view notwithstanding a federal court opinion to the contrary. The suggested amendment offers the Oregon Department of Revenue flexibility to evaluate the situations in which it might not wish to follow a federal court opinion, while providing the Department with the option to more efficiently resolve others.

My thanks in advance for the attention I hope the House Revenue Committee will give to House Bill 2535. If any member or staff of the House Revenue Committee wishes to discuss any matters in this letter or my testimony, please feel free to contact me.

Very truly yours,

Dennie Wheeler CPA

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U.S. Tax Court Bar Number WD 0517