



AGRICULTURAL COOPERATIVE COUNCIL OF OREGON

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Testimony in Support of HB 2565

John McCulley

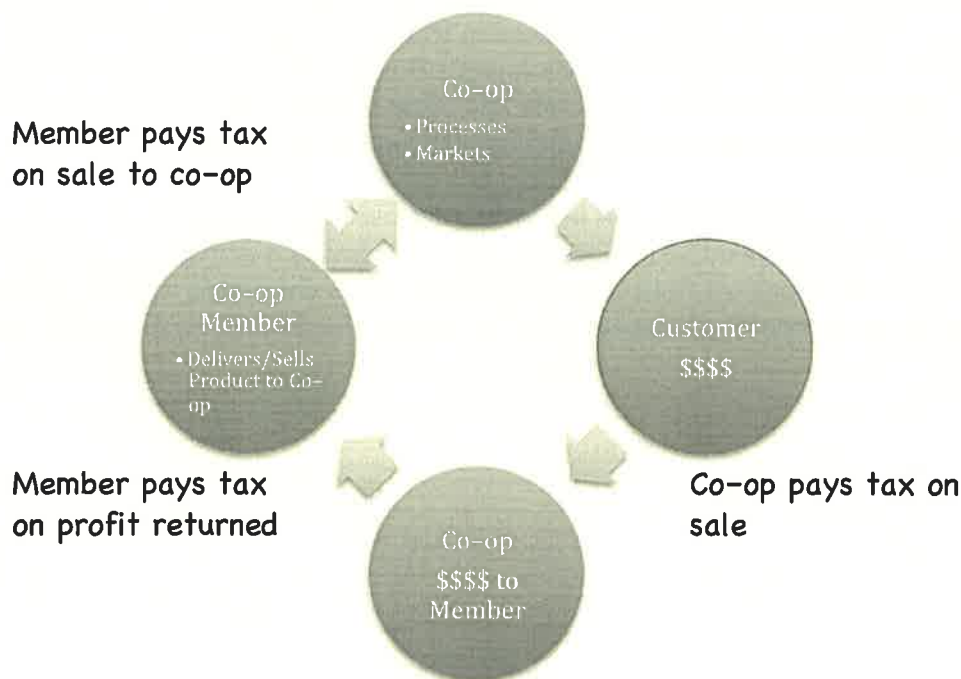
Agricultural Cooperative Council of Oregon

February 14, 2011

One of the unintended consequences of Measure 67 was the impact on cooperative businesses. A key cooperative principle is operating at cost with the proceeds generated by the co-op passing through to the owners of the cooperative, the members.

Because of this unique business model, revenues are taxed twice under the gross receipts tax, once at the co-op level and again when that revenue is passed on to the co-op members.

Here is a simple illustration of how dollars flow through a cooperative to the members. In this example, a member provides product to the cooperative that processes and markets the product. The product is sold with proceeds from the sale going to the co-op to pay the expenses associated with preparing the product for market and for the operational expenses of the co-op. By law, the cooperative must return any profit to the members, the owners of the business.



The gross receipts tax is paid by the cooperative when the member's product is sold and then when those same revenues go the member, they are taxed again, either as personal income taxes or as a tax on gross receipts if the member is a corporation.

HB 2565 corrects this double taxation situation by exempting from the definition of "Oregon sale" business done with or for members of the cooperative. The exemption applies to cooperatives as defined in Section 1381 of the Internal Revenue Code. That section includes agricultural cooperatives exempt from federal taxation under Section 521 of the Code and any other business operating on a cooperative basis EXCEPT telephone, electric and mutual insurance companies.

I believe there are about 40 agricultural cooperatives doing business in Oregon. These co-ops include both marketing organizations that take a member's product, process it and sell it, returning income to the member and supply cooperatives that purchase fuel, feed, fertilizer and other products on behalf of the members and return to the members the savings resulting from these bulk purchases.

The bill's definition also includes other cooperative businesses such as cooperative grocery stores and others. There are approximately a dozen cooperative groceries in the state and a handful of other cooperative businesses. There are other cooperatives listed with the Corporation Division but they are not what one would consider commercial enterprises – neighborhood water associations and buying clubs.

I understand three other states have a gross receipts-type tax. All three exempt cooperatives from the tax. The Texas Franchise Tax specially holds that any cooperative organized under the state's co-op law is not subject to the tax (Texas Tax Code 171.075). Ohio, like Texas, provides a blanket exclusion from the Commercial Activities Tax for cooperatives (ORC 5751.01). Under Michigan's Business Tax, cooperatives exempt by Section 521 of the Internal Revenue Code and other cooperatives exempt through Section 1381(a)(2) are also exempt from the Michigan Business Tax (MCL 208.1207).

In conclusion, we believe it was not the intent of those crafting the corporate tax on gross receipts to include cooperative businesses. The tax is levied twice on the same revenue and excluding cooperatives from the gross receipts tax is consistent with how other states with similar provisions treat cooperatives. We urge the committee to move HB 2565 forward.

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter T - Cooperatives and Their Patrons****PART I - TAX TREATMENT OF COOPERATIVES****§ 1381. Organizations to which part applies****(a) In general**

This part shall apply to—

- (1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and
- (2) any corporation operating on a cooperative basis other than an organization—
 - (A) which is exempt from tax under this chapter,
 - (B) which is subject to the provisions of—
 - (i) part II of subchapter H (relating to mutual savings banks, etc.), or
 - (ii) subchapter L (relating to insurance companies), or
 - (C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives

An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201.

(c) Cross reference

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501 (c)(12)(H).

(Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 108-357, title III, § 319(d), Oct. 22, 2004, 118 Stat. 1472.)

Amendments

2004—Subsec. (c). Pub. L. 108-357 added subsec. (c).

Effective Date of 2004 Amendment

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108-357, set out as a note under section 501 of this title.

Effective Date

Section 17(c) of Pub. L. 87-834, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) For the cooperatives.—Except as provided in paragraph (3), the amendments made by subsections (a) and (b) [enacting this subchapter, amending sections 521 and 6072 of this title, and repealing section 522 of this title] shall apply to taxable years of organizations described in section 1381(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) beginning after December 31, 1962.

“(2) For the patrons.—Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply with respect to any amount received from any organization described in section 1381(a) of such Code, to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

“(3) Application of existing law.—In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381 (a)—

“(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(B) on or after such first day with respect to patronage occurring before such first day,
the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1986 without regard to subchapter T of chapter 1 of such Code [this subchapter].”

Tillamook®



February 4, 2011

Re: Tillamook County Creamery Association Support for HB 2565.

To Whom It May Concern:

In the rush to update the corporate minimum tax ORS 317.090 has been written in such a manner that it results in a double taxation on cooperatives and violates Oregon's principle of a single source tax. This double taxation harms the family dairy farmers that comprise the Tillamook County Creamery Association.

HB 2565 has been developed to rectify this legislative oversight and restore parity among Oregon tax payers. HB 2565 will:

"Exclude sales representing business done with or for members of cooperative organization from definition of "Oregon sales" for purposes of corporate minimum tax, and imposes a \$150 entity tax on cooperative organizations."

HB 2565 is a simple legislative fix to an unintended oversight that harms cooperative members through double taxation. On behalf of our cooperative members I urge you to support HB 2565 and restore parity among Oregon tax payers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harold Strunk', with a long, sweeping underline.

Harold Strunk
President and CEO

