



February 7, 2012

Representative Phil Barnhart
Co-Chair
House Committee on Revenue
State Capitol, Rm. H-383
Salem, OR 97301

Representative Vicki Berger
Co-Chair
House Committee on Revenue
State Capitol, Rm. H-479
Salem, OR 97301

RE: HB 4066 - **Support**

Dear Co-Chairs Barnhart and Berger:

TechNet (www.technet.org), which represents the nation's leading technology companies in sectors such as information technology, hardware, e-commerce, clean energy, and biotechnology, a number of them with significant operations in Oregon, requests your support for steps to clarify and amend Oregon's Central Assessment statute (ORS 308.505(3)) with regard to the Department of Revenue's aggressive application of the law to Internet information services. Specifically, TechNet requests your support of HB 4066, which clarifies that a company cannot be centrally assessed in cases where it provides data transmission services, solely by virtue of a contract with a third party who transmits the data through tangible property that the third party owns or controls.

As you know, the Oregon Department of Revenue (the Department) has recently attempted to impose Central Assessment liability on the Internet industry. We believe that Internet information services are the wave of the future. A study on job creation in the "App Economy" released this week by TechNet shows that the Portland-Vancouver-Beaverton region, for example, ranks among the top 15 regions in the country, although the state overall is not among the top ten. Oregon's aggressive taxation of Internet information companies that have no communication infrastructure in the state as if they were telephone companies, however, places the state at a competitive disadvantage in attracting jobs. Through its actions, DoR has signaled to the online industry that if its companies want to locate or expand their operations in Oregon, companies should expect to face uncertainty with regard to their tax liability in the state, and effectively charged twice—once under the Department's unsupported interpretation of ORS 308.505(3), and again for data transmission services provided by a third party. We believe that this significantly impedes the state's ability to grow jobs.

Prior to 2009, companies providing Internet and cable services in Oregon had their property assessed locally by individual counties for the purpose of paying

property tax. This changed in 2009, when the Department decided that online information providers who hire communications providers to transmit and carry their data, are themselves "communications companies" subject to Oregon law regarding "central assessment." The Department has been aggressively trying to tax online companies in this manner, despite the fact that: 1) the central assessment system was designed to allow the state to tax assets that are spread over several counties; 2) the legislature has consistently resisted attempts to amend the statute to cover entities beyond utilities, telephone companies, railroads and expansive networks; and 3) companies such as Yahoo! do not provide "data transmission services" for hire to other entities and own no communications infrastructure in the state. In other words, its position that information providers are a "communications" company, is tantamount to saying that your local bookstore is a trucking company because it hires UPS to deliver its books.

In order to appreciate the Department's overreaching on this matter, it is important to point out the rationale behind Oregon's Central Assessment law. Central assessment is appropriate for businesses that have property throughout the state because many, if not most, of the state's local governments are protecting and serving some of the business's property. For example, a telephone company headquarters in Multnomah County would be protected and served by the governments in Multnomah County, but parts of the system located in other counties would not be. To the extent the telephone company has poles and wires running through Sherman County, Sherman County and its local governments protect and serve those poles and wires. Stated another way, poles and wires may not be worth much as property, but are an essential part of a whole; the whole being greater than the sum of its parts. In such a circumstances, it is appropriate for the state to value the whole rather than the sum of the parts.

A problem with taxing information providers centrally and providing revenues to all Oregon counties, is that in the case of Yahoo, for example, no county other than Washington County protects and serves Yahoo!'s property. Yahoo!'s "communication" property isn't like poles and wires running through Sherman County. Yahoo!'s "communication" property is intangible and thus, other than its facilities in Washington County, Yahoo! has no tangible property for a government to protect and serve. We are also aware that the Department has attempted to centrally assess two other information service providers, even though they have no property in the state whatsoever.

This is why it is essential for the legislature to clarify that at a minimum, having a contractual relationship with an Oregon company to provide data transmission service, should not turn that party into a "communications service provider." To do so not only turns the entire rationale of central assessment on its head, but sends an extremely hostile message to any information service provider who serves Oregon customers, much less who considers locating in the state. The

uncertainty surrounding central assessment has also arisen in the context of data centers located in enterprise zones, where application of the central assessment statute would frustrate the economic development strategies of communities across the state.

It is important that the Legislature provide certainty on the issue of central assessment. Therefore, TechNet requests that you support HB 4066 to define "communication" under central assessment statutes to not include providing data transmission services through a contractual agreement. Importantly, it would not exclude from the definition of "communication" a company that provides communication services through tangible property simply because the company also has contracts for service. This common sense clarification will remove the uncertainty currently surrounding the law, and reassure potential employers and service providers that they are welcome to do business in Oregon.

We appreciate your attention to this matter.

Best regards,

A handwritten signature in black ink, appearing to read "Jim Hawley". The signature is fluid and cursive, with the first name "Jim" being more prominent than the last name "Hawley".

Jim Hawley
Senior Vice President, State Policy