

Opposition to SB 311

Comcast supports the Preservation of Cost of Performance for Facilities-based Taxpayers

The Problem:

An effort by OR headquartered companies to replace Cost of Performance (COP) with Market Sourcing will provide those companies with a more favorable apportionment methodology for sales attributed to Oregon and will reduce their corporate income tax. **Unfortunately, the elimination of the current apportionment formula will simply shift their tax burden to other in-state OR businesses who contribute billions in economic activity to the state.** Many of Oregon high-tech and Broadband providers, including Comcast, would see their taxes increase. These companies, while not headquartered in OR, employ thousands of Oregon workers, investing billions of dollars in network infrastructure to serve Oregon residents and paying millions of dollars in Oregon state and local tax and fees.

“Costs of Performance” accurately attributes taxpayers’ service revenues to a state when dividing receipts from taxpayers’ multistate operations for corporation income tax purposes. Market sourcing unfairly ignores the significant taxes that many companies already pay through their property and payroll investments in the state. While Oregon-headquartered companies may have an issue with the way their state taxes are calculated in the state, the solution is not to lower their taxes and raise taxes on other responsible and robust Oregon businesses. This is bad tax policy which unfairly punishes facilities-based taxpayers that have large amounts of employees and investment in the state.

The following are the reasons for preservation of COP:

1. Cost Of Performance Sourcing More Accurately Reflects Economic Activity in the State. Under the COP sourcing methodology, sales are sourced to the state where the majority of the income-producing activity takes place. This generally means that the state with the most employees and infrastructure dedicated to producing the receipt is the state where the receipt is sourced. This method makes sense, as an income tax apportionment formula is intended to fairly reflect the economic activity of the taxpayer in any given state.
2. COP fosters uniformity among Oregon and neighboring states. This is the best means to assure that taxpayers are not taxed on more than 100% of their income.
3. States that have adopted market sourcing have done so in dramatically different ways by varying the definition of the “market.” The disparity in definitions of “market” (headquarters, billing address, business location etc.) further increases the chance of double taxation.

4. There are many practical concerns and impediments to applying a market sourcing rule to the sale of services. Unlike the costs of performance method, which uses data regarding the taxpayer's own activities, a market-based sourcing rule sources receipts based upon the "market." Where the "market" is located is often difficult to determine, particularly if the customer is a multistate company or if the benefits from the services provided transcend the boundaries of a single state.

5. Market sourcing is unlikely to encourage non-headquartered facilities-based businesses to invest in Oregon. Retaining the costs of performance method provides taxpayers with predictability and allows taxpayers to continue to rely upon longstanding Oregon precedent associated with calculation of the sales factor.

If necessary, Comcast is willing continue the discussion on this topic but does not support SB 311 as it is currently written.

Source: Doug Cooley, Comcast Government Affairs