



*Fact Sheet*

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# Con-way: The Loophole Allowing Corporations to Avoid Oregon's Minimum Tax

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Though Oregon voters put in place a minimum income tax on corporations, some companies manage to avoid it. The Con-way Tax Loophole enables some corporations to pay less than the corporate minimum, even zero in some instances. This loophole is siphoning dollars away from Oregon schools and other public services that are important to Oregonians.

## Con-way Tax Loophole Punctures Hole Through Corporate Minimum Tax

Oregon voters created the current, modest corporate minimum tax in 2010 with the enactment of Measure 67. Prior to that ballot measure, C-corporations — typically the largest corporations, those with more than 100 shareholders — faced a minimum income tax of just \$10. In some years, two-thirds of C-corporations paid just \$10.<sup>[1]</sup> Measure 67 raised the corporate minimum tax for C-corporations, establishing a sliding scale ranging from \$150 to \$100,000, based on Oregon sales. That new corporate minimum tax is still modest.<sup>[2]</sup>

A lawsuit brought by the trucking giant Con-way, Inc. punctured a hole through Oregon's corporate minimum tax floor. In 2013, the Oregon Supreme Court ruled that Con-way could use a tax credit it had purchased to eliminate its minimum tax liability for tax year 2009.<sup>[3]</sup> As a result, Con-way avoided paying the \$75,000 it would have owed under the minimum tax, based on its \$79 million in Oregon sales that year.

The Con-way decision cleared the way for other corporations, including many profitable corporations, to similarly avoid paying the minimum tax. The Oregon Department of Revenue's most recent corporate tax statistics report shows that 38 profitable corporations paid less than Oregon's corporate minimum tax in tax year 2011.<sup>[4]</sup> Of those 38 profitable corporations, at least 24 — including eight with profits of over \$5 million — paid nothing in Oregon corporate income taxes that year.<sup>[5]</sup> The report notes that the number of corporations avoiding the minimum tax under the loophole will likely change as more amended returns are filed.

Except in the case of Con-way for tax year 2009, the identity of the corporations paying less than the corporate minimum tax is unknown. The state does not require corporations to make their tax liability public.

## How Much Is the Con-way Tax Loophole Costing?

In the current budget period (2013-15), the loophole will cost taxpayers about \$40 million. About \$23 million of that figure comes from corporations amending tax returns for earlier years to take advantage of the Con-way Tax Loophole.<sup>[6]</sup>

With amended returns expected to be completed this budget period, the cost will drop in subsequent biennia. If the Legislature fails to close it, the loophole will cost a projected \$18 million during the 2015-17 budget period and about \$19 million during 2017-19.<sup>[7]</sup>

## Conclusion

When Oregon voters enacted the Measure 67 minimum tax, they intended for all corporations to contribute something — a minimum amount — toward the common good. Closing the Con-way Tax Loophole would uphold the will of the voters.

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[1] [A Step Toward Balance: Measures 66 and 67 move Oregon closer to a tax system based on ability to pay](#), Oregon Center for Public Policy, October 12, 2009.

[2] The sliding scale starts at \$150 for C-corporations with less than \$500,000 in Oregon sales revenues. For corporations with \$500,000 or more in Oregon sales, the new minimum tax will be no more than \$1.50 on every \$1,000 in sales and will be capped at \$100,000 for corporations with sales of \$100 million or more (i.e., less than \$1.00 for every \$1,000 in sales for companies with sales of more than \$100 million).

[3] [Con-way, Inc. & Affiliates v. Department of Revenue](#), 302 P3d 804 (Ore. 2013).

[4] Data on how many companies pay less than the minimum tax comes from OCPP analysis of data emailed from Mary Fitzpatrick, Oregon Department of Revenue, to Jason Gettel, OCPP, February 28, 2014 and OCPP analysis of data from Oregon Department of Revenue, [Oregon Corporate Excise and Income Tax, 2013 Edition](#). The Department of Revenue states that these figures are subject to change as more corporations file amended returns.

[5] A total of 79 corporations used credits to reduce their tax liability to \$0 in tax year 2011. It's unclear exactly how many of them were profitable that year, though the data shows that at least 24 turned a profit.

[6] Email from Christopher Allanach, Oregon Legislative Revenue Office, to Chuck Sheketoff, Oregon Center for Public Policy, July 24, 2014.

[7] Ibid.

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