



Date: February 16, 2015
To: House Revenue Committee, Chair Barnhart and Members
From: Laurie Wimmer, OEA Government Relations Consultants
RE: *HB 2076, HB 2096, and HB 2107*

The 42,000 members of the Oregon Education Association appreciate the sponsors of the three bills before the House Revenue Committee today who seek to clarify and correct statutory language regarding the corporate minimum tax. It is our belief as proponents who worked hard to pass Ballot Measure 67 that the intention of the State of Oregon and its citizens was that all corporations doing business in this state should pay at least a minimum amount for the privilege of operating here. The minimum tax is that amount which, after all other calculations are considered, is the bottom line.

Indeed, the language had always seemed clear to policymakers, to the Department of Revenue, and to the average citizen – at least until recently. ORS 317.010 reads in (2):

“Each corporation or affiliated group of corporations filing a return under ORS 317.710 (Corporation tax return requirements) shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

“The excise tax is based on the greater of two values: the calculated tax on a corporation’s income; or a minimum tax based on Oregon sales.”

We acknowledge that the Oregon Supreme Court upheld the judgment of the Oregon Tax Court, allowing the BETC to be applied against the corporate minimum tax, and we do not dispute its ruling in *Con-way, Inc. & Affiliates v. Dept. of Revenue*. We simply believe that the precise language under scrutiny constituted an error in drafting that failed to capture the intent of policymakers, advocates, and indeed, the citizens of Oregon, who validated the Legislature’s decision in their Measure 67 vote of 53.59 percent in favor.

In the words of several accounting experts, the Con-way decision has opened the floodgates, which could cost the state \$90 million in tax revenue over the next decade – some \$25 million in the next biennium alone. That sum would buy 276 teachers for a full school year.

According to accounting firm Moss Adams, for instance, “the tax court decision extends to all corporate tax credits being applied against the corporate minimum tax if not specifically prohibited by statute. In other words, this decision opens the door to offsetting corporate minimum tax with substantially all tax credits ... since the inception of the increased minimum tax in 2009.”

We believe that when voters passed the reforms to the corporate minimum tax, they did so because they believe that corporations, especially the very large ones, should be paying at least a *de minimis* amount for the privilege of doing business in the state – for using our roads, our water, public safety services, and the like.

We also believe that businesses generally assumed that the corporate minimum law was written to ensure that every business pays at least \$150. A review online of various business tax advice entities reflects this. Here are a couple of examples:

Per CBiz: “The previous minimum corporate income tax of \$10 is increased ranging from \$150 to \$100,000 based on Oregon sales for tax years beginning after 2008, and a \$150 minimum tax is imposed on S corporations and partnerships.”

Per SmallBiz.com: “Corporations pay a minimum \$150 tax.”

Indeed, Ballot Measure 67’s text informed voters of this concept explicitly:

Under current law, corporations conducting business in Oregon pay \$10 minimum tax; tax has not changed since 1931. Some corporations pay a profits tax of 6.6%. All other businesses pay no minimum or profits tax. Beginning in tax year 2009, the Measure increases \$10 minimum corporate tax to \$150; some corporations with over \$500,000 in Oregon revenues will pay minimum tax of approximately 0.1% of Oregon revenues. Limits tax to \$150 for S corporations and partnerships. Sole proprietors are not impacted by this measure. Raises tax rate some corporations pay on profits by 1.3 percentage points until 2011; increase then drops to 1 percentage point and as of 2013, applies only to profits over \$10 million. Corporations pay minimum tax or profits tax, not both. Increases filing fees by \$50 for Oregon businesses, by \$225 for out of state businesses. Raises estimated \$255 million to provide funds currently budgeted for education, health care, public safety, other services. Because some state money brings in federal matching funds, Oregon will likely receive more federal money if measure passes than if the Measure fails. Other provisions.

In 2014, the Oregonian editorialized about this and a related problem – the fact that some profitable corporations buy down their liability to zero while others pay taxes even when unprofitable:

“At least 24 companies operating in Oregon didn’t pay any state income tax in 2011 despite reporting profits, the Oregon Center for Public Policy recently reported. The state’s corporate minimum tax is supposed to prevent that type of tax avoidance, right? Yes, but the report only told part of the story...While some profitable companies didn’t pay the minimum tax, some companies that lost money did pay. Both Jason Gettel, an analyst with the policy center, and officials at the Oregon Department of Revenue acknowledged that under Oregon’s corporate tax system, some unprofitable companies do pay taxes....If you aren’t yet convinced that Oregon needs comprehensive tax reform, consider the absurdity of the current situation.”

House Bills 2076, 2096, and 2107 all seek to ensure that the original intent of a corporate minimum tax is preserved in the operation of Oregon’s tax law. This state’s lottery produces more revenue for our schools, health care and public safety system than do our corporate taxpayers. For this reason, it is our hope that one of the versions of this modest fix becomes this legislature’s top priority.

Thank you.