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Subject: HB 2286 Testimony - Moss Adams
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Moss Adams has national experience with transferable credits having transacted north of $800 million in transferable state tax credits in over 20 states. Transferable tax credit programs are a sound economic development tool for states as they allow companies earning a credit that are unable to utilize them for any number of reasons to still benefit from the programs by monetizing the credits. Transferability also avoids the state from having to directly subsidize a project through cash grants and/or allowing the credit to be refundable to the project owner. Additionally, the seller of a tax credit produces taxable income to the state.

Our understanding is that HB 2286 intends to achieve uniformity for transferable tax credits to ensure all credits are only claimed once and by the appropriate taxpayer. We generally support the bill as written and the notification requirements. However, we do not think any other restrictions should be placed on the transfers as it relates to timing or otherwise. It makes sense allowing certain users of tax credit programs the ability to transfer their credit in order to put them in a similar economic position, as if they had utilized the credit. There are numerous reasons for transferability which I won't go into in this testimony, but some include: taxpayer having no taxable income to use credit, encourage out of state investor participation, nonprofit & governmental entity participation, certainty of project finance and better utilization of credit program etc. Putting conditions on the amount of time one has to transfer these incentives only places more risk and uncertainty on the transfer process. Uncertainty in the tax credit world drives credit prices down which ultimately delivers less cash to the project owner.

As it relates to the bill, we agree that there should be a notification requirement to the state upon transfer. Additionally, we believe the state should be approving and reissuing certificates in the buyer's name, similar to what the Department of Energy ("DOE") currently does for the Energy Incentive Program ("EIP"). However, this responsibility should be that of the Department of Revenue ("DOR") not the DOE. Furthermore, there should be a tax credit registry system where any agency granting/issuing tax credits also provides proof of such credit to the DOR in order to maintain a complete registry of tax credits statewide and for all programs. Upon transfer, the buyer and seller would provide notice/request of the transfer to the DOR who would in turn update the registry showing the new eligible claimant of the specific credit and reissuing a tax credit certificate to the buyer. With this in place, the state would know at any given time what credits are outstanding and who is the eligible party that may claim it on a tax return. Louisiana recently implemented a registry for its tax credit programs.

There should be no uniform restrictions on when a tax credit can be transferred. Any restrictions to transfer a tax credit should be driven by the particular tax credit statute authorizing the program. This is the case for most all other states with transferable tax credit programs (e.g., MA, CT, GA). For example, biomass may be claimed in the year it was earned and may only be transferred prior to the

due date of the transferors tax return including extensions, while EIP credits may only be claimed by a transferee in the year of transfer. Finally, as the bill indicates, should a credit be statutorily allowed to be claimed on an amended return, the state should not have to pay interest on resulting refunds.

Furthermore, the state should not be in the business of setting prices for its transferable tax credit programs. No other state does this. At most, other states set a floor (i.e., 60, 70, 85 or 90 cents depending on how the credit is used). The state should allow the market (buyers and sellers) the flexibility of setting pricing and timing of transfers based on their specific facts and circumstances. Sellers have different motivations for the timing of when they would ideally negotiate and enter a contract to sell their tax credits. They are mostly tied to how a project was financed. The state should not be involved in these types of business decisions as it cannot contemplate all the motivating factors impacting when a buyer and seller transact on a tax credit. Again, if the intent of the legislature is to incentivize certain activities through issuing tax credits that can be transferred, we should provide flexibility to allow these transfers.

In conclusion, we support the DOR notification, no interest provision on refunds and other uniformity aspects of the bill (e.g., recapture). We do not support any timing or other restrictions on transfers of tax credits proposed by HB 2286.

Thank you for your time. I'm happy to discuss any of these comments with any committee members wanting more detail.

Rob

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