OREGON DEPARTMENT OF REVENUE

Legislative Testimony

Senate Committee on Finance and Revenue **May 17, 2017**

SB 28 -12 Market-based Sourcing

Summary

Senate Bill 28 as amended by the -12 would shift Oregon from a cost of performance method of apportioning receipts other than receipts from the sale of tangible personal property (e.g., services and intangibles) to a market-based method. The amendment also restates that the provisions of UDITPA do not apply to taxpayers who are required to apportion under ORS 314.280 and does not affect the department's ability to write rules under ORS 314.280.

Comments

The department supports this Multistate Tax Commission uniformity proposal that shifts from cost of performance to market-based sourcing for companies subject to UDITPA. We do not believe the addition of Section 4 in this amendment is necessary because financial institutions and public utilities are required to apportion their receipts under ORS 314.280, not the provisions of ORS 314.605 to 314.675.

The department wants to make the following points clear in the record: this market-based sourcing proposal is drafted for UDITPA taxpayers (ORS 314.605 to 314.675), and financial institutions are specifically excluded from UDITPA, along with public utilities (ORS 314.615). ORS 314.280 requires the department to adopt rules for apportionment of net income of financial institutions and public utilities. SB 28 -12 does not limit or affect the department's power to adopt or amend rules for financial institutions or public utilities to fairly and accurately reflect net income from business in Oregon. See Attachment A for additional detail.

For more information about this testimony, contact Jeff Henderson at 503-947-2124
or Deanna Mack at 503-947-2082.

Attachment A:

From: Weirnick Darren
Sent: Friday, May 12, 2017 11:55 AM
To: MACK Deanna D * DOR; HENDERSON Jeffrey S * DOR
Cc: HARBUR Marilyn
Subject: SB 28 proposed amendments

Jeff and Deanna,

You asked Marilyn Harbur and me whether Senate Bill 28, which adopts a portion of the Multistate Tax Commission's uniform statutory language for market-based sourcing of sales other than sales of tangible personal property, applies to financial institutions subject to ORS 314.280. **The answer is no.**

The proposed amendments to ORS 314.665 in SB 28 and the proposed market-based sourcing provision in the bill are both part of ORS 314.605 to 314.675, the Uniform Division of Income for Tax Purposes Act (UDITPA). Clearly and unambiguously, taxpayers subject to UDITPA apportionment do not include financial institutions or public utilities. Instead, financial institutions and public utilities are subject to apportionment under ORS 314.280, as stated in ORS 314.615: "**Any taxpayer having income from business activity** which is taxable both within and without this state, **other than activity as a financial institution or public utility** or the rendering of purely personal services by an individual, **shall allocate and apportion the net income of the taxpayer as provided in ORS 314.605 to 314.675**. **Taxpayers engaged in activities as a financial institution or public utility shall report their income as provided in ORS 314.280** and 314.675." ORS 314.610(4) and (6) define "financial institution" and "public utility," but only for the purpose of excluding those types of companies from the apportionment and allocation provisions of UDITPA, including ORS 314.665.

The proposed amendment to Section 2(3)(c) in SB 28-8 (May 8, 2017) would exclude certain sales of intangible property from the sales factor "[f]or a taxpayer other than a financial institution as defined in ORS 314.610." That wording is meaningless because ORS 314.615 already excludes all financial institutions from UDITPA. Worse, because statutes generally are interpreted to give effect to all wording when possible, it is not out of the question that a court would read Section 2(3)(c) in SB 28-8 to imply that financial institutions are subject to all of UDITPA's other provisions, impliedly repealing the reference to financial institutions in ORS 314.615. We have the same concern if the amendment were applicable to all ORS 314.280 companies

We do not see a way to meaningfully include a provision in SB 28 to address, within UDITPA (ORS 314.605 to 314.665), the receipts of a financial institution that is already excluded from apportionment under UDITPA (ORS 314.605 to 314.665). The receipts of financial institutions are apportioned under OAR 150-314-0088, a department rule originally adopted in 1993 under ORS 314.280, based on a Multistate Tax Commission uniform regulation. Section (4) of OAR 150-314-0088 covers sales factor sourcing of most types of financial institution receipts—including loan interest, credit card receivables, loan servicing fees, receipts from services, and income from investment assets and activity and from trading assets and activity. A catchall provision in OAR 150-314-0088(4)(n) covers "all other receipts" included in apportionable business income that are not otherwise sourced in subsections (a) to (m) of OAR 150-314-0088(4). That catchall provision currently sources "all other receipts pursuant to the rules set forth under ORS 314.665." However, nothing requires the department to continue to refer to ORS 314.665 in the catchall provision in OAR 150-314-0088, if that reference creates specific problems. ORS 314.280 allows the department to amend the catchall provision at any time to eliminate the reference to ORS 314.665 and substitute other language.

Regards,

Darren

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