



TO: Members of the Oregon House Committee on Revenue

FROM: Damian Hunt, Amazon

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RE: Support of Market-Based Sourcing Provisions Presented in Amendments to SB 28-A

Amazon.com, Inc. & Subsidiaries (“Amazon”) is an invested partner in Oregon, with over 700 employees, a corporate office, and an AWS cloud computing region. There are more than 40,000 authors, sellers, and developers in Oregon growing their businesses and reaching new customers on Amazon products and services.

This letter outlines Amazon’s support of Senate Bill 28-A. SB 28-A would adopt a market-based sourcing method for sourcing receipts from sales of services and intangibles, replacing Oregon’s current cost-of-performance sourcing method. For the reasons set forth below, Amazon urges the Committee to recommend the adoption of market-based sourcing.

Current Law in Oregon

When a corporate or nonresident individual taxpayer has business income from activities taxable within and outside of Oregon, the taxpayer must apportion its business income using a statutory formula.¹ Specifically, business income is apportioned by multiplying it by a single sales factor, the numerator of which is a taxpayer’s Oregon sales, and the denominator of which is a taxpayer’s total sales.² Sourcing sales involves determining which sales should be included in the numerator of the sales factor.

Generally, sales of tangible personal property qualify as Oregon sales, and are therefore included in the numerator, when the property is delivered to a purchaser in Oregon, or if the property is delivered from Oregon to a location where the taxpayer is not taxable.³ Thus, the sourcing of merchandise sales is largely based on the location of a taxpayer’s marketplace.

Sales of services and intangible property qualify as Oregon sales when the “income-producing activity” is wholly performed in Oregon, or when performed within and outside of Oregon, “a greater proportion of the income-producing activity is performed in [Oregon] . . . based on costs of performance.”⁴ Therefore, unlike merchandise sales, the sourcing of sales of services and intangibles is based on the location where the activities are performed.

Policy Reasons for Changing to Market-Based Sourcing

There are a number of policy reasons for adopting market-based sourcing in Oregon.

¹ ORS § 314.615.

² ORS § 314.665(1).

³ ORS § 314.665(2).

⁴ ORS § 314.665(4).

1. Market-based sourcing makes Oregon more competitive by treating everyone who participates in the Oregon marketplace the same. Whether a taxpayer is an out-of-state company or an in-state company, receipts are assigned to the state where the customer is located.
2. Market-based sourcing reduces the likelihood of double taxation that currently exists for Oregon-based companies. Twenty-one states and the District of Columbia have adopted market-based sourcing rules, including Oregon's neighbors to the north and the south. As a result, Oregon companies currently pay tax on services performed in the state, where the activities are performed, and then again in market-sourcing states where the customer is located. This is not the case for companies in states that have adopted market-based sourcing.
3. Market-based sourcing encourages Oregon employment and investment, thereby increasing Oregon's tax base. By focusing on imposing Oregon's corporate income/excise tax based on a company's market in the state, rather than focusing on the in-state activities, Oregon would no longer inflict a disproportionate impact on companies for being located in-state or for making substantial in-state investments.
4. Market-based sourcing reduces complexity. Generally, market-based sourcing requires taxpayers to identify where services are delivered or where customers receive the benefit of the services provided, and to source related receipts to those locations.
5. Market-based sourcing levels the playing field for Oregon companies. The historic reason for a sales factor in the apportionment formula is to more accurately parallel a taxpayer's customer base in the formula. States' shift to a single sales factor formula and market sourcing seeks to equate a taxpayer's tax base with their customer base, and to expand the tax base of out-of-state businesses while relieving the tax burden on in-state companies. However, Oregon's shift to a single sales factor formula requiring a cost-of-performance approach effectively punishes in-state companies by pulling more sales into their sales factor and thus, increasing their Oregon tax burden. Adopting a market-based sourcing method treats all companies the same, regardless of their business activity and location.

For the above reasons, Amazon supports Oregon's adoption of market-based sourcing. We appreciate your consideration of these comments and are happy to serve as a resource for the Committee in the future.