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Statement In Support of Senate Bill 1523  
Senate Revenue and Finance Committee  
February 6, 2018

The Motion Picture Association of America, Inc. (“MPAA”) on behalf of its member companies, supports S.B. 1523. MPAA is a not-for-profit trade association founded in 1922 to address issues of concern to the U.S. motion picture and television industry. Its members are: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, Warner Bros. Entertainment Inc., and CBS Corporation as an associate member. The MPAA member companies and their affiliated entities own all of the major television broadcast networks and most of the national cable program networks currently operating in the U.S.

S.B. 1523 provides an extension of time for the commercial domicile method of apportioning the income of national broadcast and cable network program companies. Commercial domicile apportionment was enacted in 2014 (H.B. 4138), initially for a three year period to provide a corporate income tax apportionment formula for the national broadcast and cable program networks (“interstate broadcasters” in S.B. 1523). By its design, the commercial domicile apportionment method apportions revenue received by the interstate broadcasters’ from their Oregon-based customers to Oregon under the corporate income tax law. This apportionment formula represents a market-based sourcing method for interstate broadcast companies. The Oregon customers of the national broadcast and cable networks include companies that are domiciled in Oregon and either advertise on these networks or license programming content from them. Examples of such companies include Nike, Columbia Sportswear, Voya Financial and local television stations.

## Historical Perspective

The distribution and viewing of programming on a television screen has changed dramatically. From the invention of television until the mid-1990's, there were three principal broadcast networks whose programming was uplinked by the networks to a satellite and then downlinked by the local stations. The local stations then transmitted the programming to their viewers. The TV network/TV station business model was supported by advertising revenue paid to the national broadcasters.

Today there are five national broadcast networks (ABC, CBS, NBC, Fox and CW) and scores of cable program networks whose programming is distributed to viewers through cable and satellite operators, telecom companies and through subscription services, pay-per-view or on demand services over the Internet. The companies who produce the content receive revenue from advertisers and from all of the distributors that license the broadcast or cable network programming. In addition, the broadcast and cable network companies are now beginning to launch new, direct-to-consumer services, by-passing the distributors in order to establish a direct relationship with the viewers. Examples of this include CBS All Access and HBO Now.

H.B. 4138 represented a temporary effort, establishing a pilot program, to provide interstate broadcasters with an apportionment formula that sourced receipts based on the location of their direct customers – the parties with whom the interstate broadcasters have a contractual relationship. The legislation established commercial domicile as the apportionment formula on a trial basis for three years. As a practical matter, H.B. 4138 did not provide a sufficient number of tax years to assess the impact of the market sourcing apportionment formula. Tax returns are not filed typically until nine months after the close of the tax year. Moreover, the interstate broadcasters owned by the MPAA companies are on various tax years – some based on the calendar year and other based on different fiscal years. S.B. 1523 reinstates commercial domicile apportionment for 2017 and provides an additional three years to give the Legislature additional time to properly evaluate the impact of the commercial domicile apportionment method on Oregon.

Commercial domicile apportionment is consistent with Oregon's enactment in 2017 (S.B. 28) of market sourcing for all businesses. Market-based sourcing is the clear trend in apportionment having been adopted by many states around the

country in the past ten years. It is based on the location of the taxpayer's market – that is the state where the taxpayer's customers are located or based. It provides clarity and consistency to both the taxpayer and the Department of Revenue. Commercial domicile apportionment for interstate broadcasters represents the application of market-based sourcing to the interstate broadcast industry. It accurately reflects not only the method by which income is earned by interstate broadcasters, but also from whom it was earned.

Much like market-based sourcing generally, the commercial domicile method has been adopted by numerous states including several states since Oregon adopted it in 2014 – Rhode Island, Tennessee, and Iowa. Some other states adopting the commercial domicile method of interstate broadcasters include Michigan, Illinois, Texas and Florida.

In enacting commercial domicile apportionment in 2014, Oregon replaced an alternative apportionment method, known as viewing audience. The viewing audience method is outdated, has only been adopted by one state in the past dozen or more years and is extremely difficult to administer which leads to frequent disputes, contested audits and litigation. The viewing audience method does not reflect the location of the customers of the broadcast and cable program networks and poses additional challenges:

#### Lack of information and Uncertainty

It is difficult to ascertain the viewing audience of these networks. Satellite companies and Internet distributors, who represent a significant portion of the customer base of the broadcast and cable program networks, do not provide state-by-state viewer data to the networks, nor is such data available for Internet distributors through third party research services. Moreover, many viewers watch programming on portable devices, frequently not at their home address. Therefore viewer data does not accurately reflect where the programming is watched. To the extent that third party research services do measure viewing for certain distributors of the programming licensed by interstate broadcasters, rating services, like Nielsen, basing the viewing data on designated market areas (or DMAs) that frequently cross state lines covering portions of two or three states. For example, the Portland DMA includes parts of Washington State.

## Unfair

Calculating the tax obligation of the national broadcast and cable program networks based upon the outdated viewing audience method would effectively require these interstate broadcasters to pay tax based on where a broadcaster's customers' (cable, satellite and Internet distributors) customers (viewers) are located. The networks have contracts with Oregon-based advertisers and licensees, such as cable companies and local TV stations. With the exception of the "over-the-top" direct to viewer subscription services, such as CBS All Access and HBO Now, the national broadcast and cable program networks, operate as wholesalers. They should not be required to pay tax in Oregon based on a viewing audience method which treats them as if they were retailers.

## Commercial Domicile Method Provides Stability and Predictability.

Under the commercial domicile apportionment formula, national broadcast and cable program networks recognize an obligation to file tax returns and pay tax in Oregon, providing a reliable and stable revenue stream to Oregon. Reverting to a viewing audience methodology will create the opposite environment – unpredictability and instability. Many of these broadcast and cable networks will have varying and changing audiences, ensuring that resources, of both taxpayers and the Department of Revenue, will have to be expended to determine the correct portion of the viewing audience for each and every network that is located in Oregon.

For all of the above reasons, the MPAA respectfully requests the Committee approve S.B. 1523.