

June 22, 2020

Senate President Peter Courtney
House Speaker Tina Kotek
Oregon State Capitol
900 Court Street NE
Salem, Oregon 97301

Sent via email

Re: Statutory Corrections to the Corporate Activity Tax (H.B. 4009-A, 2020)

Dear Senate President Courtney and House Speaker Kotek,

On behalf of the Smart Growth Coalition and Council On State Taxation (C.O.S.T.), we are writing to express our continued concerns regarding statutory ambiguities complicating the implementation of the corporate activity tax (C.A.T.) and the crucial need for corrective legislation in the upcoming special session. To be clear, we are not asking for delaying the implementation or changing the structural design of the tax, but to enact clarifying amendments proposed during the 2020 session.

While our organizations approached the enabling legislation differently, we are aligned in our commitment to working alongside the executive and legislative branches to ensure the C.A.T. functions as intended by the legislature. Through the development of the rules and regulations, however, it has become clear there are significant statutory ambiguities regarding the statutory subtraction, filing groups, and filing period. These provisions are inherently technical but represent the underpinnings required for every taxpayer to calculate the tax, and, thus, pose significant administrative and compliance obstacles without clarification.

During the 2020 session, we worked closely with a technical working group to identify and recommend corrective measures to simplify the administrative and compliance burdens. Together with the Oregon Department of Revenue ("Department") and Legislative Revenue Office, we agreed to a series of statutory corrections designed to resolve the known ambiguities. These corrections were ultimately included in H.B. 4009-A and unanimously approved by the House Revenue Committee. Due to the abrupt end of the session, however, the measure did not become law despite not having any known opposition.

Our technical working group continued to work throughout the spring to craft administrative rules and regulations to provide clarifications along the lines of H.B. 4009-A. Regrettably, it appears the Department does not have the statutory authority to achieve meaningful clarifications through regulation in the absence of H.B. 4009-A. The outcome of our regulatory efforts is disappointing and unfortunate, given the consensus between the Department and taxpayers during the 2020 session.

Senate President Courtney, House Speaker Kotek

June 22, 2020

Page 2

While the contents of H.B. 4009-A do not address state spending, there is a direct correlation to the state's ability to collect the tax. Without these changes, the Department and taxpayers will struggle to comply with the statutory and regulatory provisions of the C.A.T. These issues will impede the ability of taxpayers to effectively comply with the requirements of the tax and increase the state's exposure to litigation. Most importantly, resolving these issues in the upcoming special session will provide guidance in advance of the estimated payments due by July 31.

For these reasons and the reasons expressed in our legislative and regulatory comments enclosed with this letter, we respectfully ask the legislature to redraft and pass H.B. 4009-A in the upcoming special session. If you have any questions, please feel free to contact us.

Sincerely,



Jeff Newgard
Executive Director
Smart Growth Coalition
jeff@peakpolicy.com



Nikki Dobay
Senior Tax Counsel
Council On State Taxation
ndobay@cost.org

CC: Senator Fred Girod, Co-Vice Chair	Representative Paul Holvey
Representative Christine Drazan, Co-Vice Chair	Representative Rick Lewis
Senator Ginny Burdick	Representative Andrea Salinas
Senator Tim Knopp	Representative Duane Stark
Senator Lew Frederick	Chris Allanach, Legislative Revenue Officer
Senator Kim Thatcher	COST Board of Directors
Senator Floyd Prozanski	Douglas L. Lindholm, COST President &
Representative Janelle Bynum	Executive Director

Enclosures (10)

1. Nikki Dobay, "Oregon C.A.T. Part I: Legislative Fixes Needed for Administration," *Tax Notes State*, January 13, 2020
2. Nikki Dobay, Comments to the House Revenue Committee, February 5, 2020
3. Jeff Newgard, Comments to the House Revenue Committee, February 11, 2020
4. Nikki Dobay, Comments to the House Revenue Committee, February 11, 2020
5. Nikki Dobay and Jeff Newgard, "Oregon C.A.T. Part II: Fixes Still Needed to Ease Administration," *Tax Notes State*, April 27, 2020
6. Nikki Dobay, Comments to the Oregon Department of Revenue, May 26, 2020
7. Jeff Newgard, Comments to the Oregon Department of Revenue, May 26, 2020
8. Paul Jones, "Groups Urge Changes to Oregon Gross Receipts Tax Regulations," *Tax Notes Today State*, June 1, 2020
9. Daniel Tay, "Orgs Say Proposed Oregon Corp. Tax Rules Violate State Statute," *Law 360 Tax Authority*, May 29, 2020
10. Nikki Dobay, Email to Oregon Department of Revenue, June 12, 2020