



Oregon Society of Certified Public Accountants

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2020 Oregon Legislative Assembly – Second Special Session House Interim Committee on Revenue Testimony related to LC2 - **Opposition**

Date: August 7, 2020

Good afternoon, Chair Rep. Nathanson, Vice-Chair Rep. Marsh, Vice-Chair Rep. Reschke, and Members of the House Interim Committee on Revenue.

On behalf of over 4,200 members of the OSCPA, we respectfully submit testimony in opposition to LC2 related to business interest expense and business losses (section 3 and 4).

Background:

Why is opposition to LC2 appropriate?	<p>LC2 introduces multiple provisions into Oregon law which deviate from federal tax law. These changes will add complexity to Oregon law affecting taxpayers as well as the Department of Revenue.</p> <p>The overarching issue and concern related to LC2 is <u>not limited</u> the specific subject matter – the excess business loss deduction, the net operating loss deduction, and the business interest deduction limitation.</p> <p>Instead, from a more important perspective, LC2 advances the idea that Oregon disconnecting from federal tax statute and provisions is a simple course of action with few consequences. Disconnecting from federal statute and provisions increases state tax complexity, a significant consequence.</p> <p>LC2 can be misinterpreted. Some may consider that this federal provision only impacts a small number of wealthy Oregonians. Instead, it could have a significant impact on the financial health of Oregon businesses, thus it could also impact their employees. Those taxpayers are employed in many different businesses and cross many income levels.</p> <p>As the LC2 is written, Oregon NOL is the same as federal, thus there is no option to revert to Tax Cuts and Jobs Act (TCJA). This is subject to limits. There is no deductibility in future years.</p> <p>As the LC2 is written, the impact on Oregon net operating losses could be significant. NOL is the same as federal; there is no option to revert to TCJA. There is also no provision to make a different election as to when the taxpayer will deduct the loss, thus eliminating deductibility in future years. Tax law should have symmetry, and in this regard, the change should be merely a timing issue.</p> <p>Additional legislative time would be required to establish and maintain Oregon's separate tax code with regard to disconnected provisions.</p> <p>With regard to the net operating loss provision, LC2 does not provide for carryforward of the disallowed net operating loss carryback. We do not believe the intent of LC2 is to permanently disallow the deduction of these losses for struggling business owners. This drafting issue illustrates the need for considered and thorough analysis when choosing to depart from federal tax code, to avoid unintended consequences like this. This also illustrates the difficulty of Oregon establishing and maintaining its own tax code with regard to specific disconnected provisions.</p>
What is the negative effect of not conforming?	<p>We oppose disconnecting as some of these consequences include:</p> <ul style="list-style-type: none">• It is recognized that Oregon is in a challenging economic environment based on the impact of the pandemic. At first glance, it could be assumed that this section of the federal CARES Act primarily benefits the wealthy. That is a false assumption. Oregon's

	<p>business community consists of many small “main street” businesses and is not significantly represented by numerous multi-national businesses. Businesses of all sizes, especially small, have been impacted by COVID-19.</p> <ul style="list-style-type: none"> • Disconnecting from federal statute and provisions increases our state tax complexity with significant consequences. Complexity negatively impacts Oregon and out-of-state taxpayers, both individuals and businesses, as well as tax advisors, as it increases the risk of misinformation and thus non-compliance. This increases the risk of noncompliance for taxpayers who may complete their own individual or business tax preparation. • Not all businesses nor individual taxpayers utilize the expertise of tax advisors. This makes the need for conformity to ensure compliance even more important. • Complexity can also have potential negative impact for the Oregon Department of Revenue (DOR) of their processing. The more difficult the understanding of the differences between state and federal statutes and provisions, the higher the risk of noncompliance by taxpayers. • Many amended returns have already been filed to incorporate the federal changes. If Oregon were to disconnect in this area, it would require completion of yet another amended return for taxpayers. This sets the stage for conflicting filed returns. This could also increase the number of inquiries from the public as well as tax advisors. • Supporting conformity, and not disconnecting from various federal statutes and provisions, is in the best interest of Oregon taxpayers, both for businesses and individuals. This helps taxpayers to understand that the decisions they make for federal purposes also impact their Oregon tax obligation and compliance.
Why is conformity the preferred method of tax policy?	<p>Conformity between federal tax law and Oregon statutes reduces tax complexity for a variety of stakeholders.</p> <ul style="list-style-type: none"> • Complexity negatively impacts Oregon taxpayers as well as tax advisors. • Without conformity, Oregon must <u>write and maintain its own tax code</u> – a significant and complex undertaking. Additionally, this also means that taxpayers, both individuals and businesses alike, are having to attempt to follow two different sets of tax code – one at the national level and one at the state level. • Complex tax law raises costs for taxpayers as tax advisors must spend more time on returns. Instead, many tax advisors would prefer to advise their clients on the important aspects of running and strengthening their businesses. This is particularly the case for small businesses that may have much need for support, versus the tax advisor and taxpayer needing to focus on overly complicated tax code. • Complexity also has the potential to negatively impact the Oregon Department of Revenue (DOR). The more complex the process of understanding the differences between state and federal statutes and provisions, the higher the risk of unintended noncompliance by taxpayers. • In the case of LC2, many taxpayers have already filed their 2019 tax returns. That raises questions such as: <ul style="list-style-type: none"> ○ Will those returns have to be returned from the DOR as they will have to be amended? ○ Will DOR be able to easily deal with the potential backlog? • It should be noted that the compliance challenges that will be faced by Oregon Department of Revenue could be significant. Components in tax code are interconnected, so changes in rules affect or impact other areas which must be considered and possibly rewritten.

Recommendation:

Supporting conformity, and not disconnecting from various federal statutes and provisions, is in the best interest of Oregon taxpayers and the Department of Revenue. This helps taxpayers to understand that the decisions made for federal purposes also impact their Oregon tax obligation and compliance.

On behalf of Oregon Society of CPAs, we respectfully encourage you to oppose LC2 and remain connected to federal tax code and provisions. Thank you for the opportunity to share our concerns.

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