



TESTIMONY

JOINT STUDENT SUCCESS COMMITTEE

April 18, 2019

Oregon Agricultural Groups Concerns on HB 3427

Oregon's agriculture community has concerns about the implications of HB 3427 and the posted -1 amendment, which lays out the proposed Corporate Activity Tax (CAT). Investments in our schools, classrooms, and career and technical education to provide a quality learning experience and opportunity for Oregon's students is essential. However, the CAT proposal exposes Oregon agriculture, the second largest traded-sector industry in Oregon, to higher costs and considerable uncertainty. Farmers and ranchers operate in a dynamic market where year-to-year inputs, sales, and labor vary, and a large variance could place a family farmer or rancher over the threshold and trigger an unexpected tax burden. Also, the CAT creates a discrepancy between agricultural operations depending on the farm crop produced and how that crop is marketed.

Oregon agriculture is trade dependent and ships quality products domestically and globally. As drafted, the CAT applies to sales in Oregon. The farm crops that leave the state would not be subject to the tax; however, all the inputs that are required for successful production would drive up the cost of doing business in Oregon. Farmers and ranchers cannot continue to absorb the actual cost of production and compete with out-of-state growers who can produce crops at a cheaper rate. Adding a gross receipts tax on the seeds, rootstock, off-road fuels, crop production tools, and capitalized items increases the cost of local production with a limited ability to recoup those increases.

The -1 amendment to HB 3427 contains ambiguities and uncertainties for Oregon farmers and ranchers. The draft language of the CAT raises several concerns, significantly:

- In Section 3 (CC) "Receipts from the wholesale or retail sale of groceries," it is our understanding the intent is to exempt food. A deeper analysis raises questions about a partial or total exemption of food. Section 3 (11) defines 'groceries' as 'food' as defined in 7 U.S.C. 2012(k). The Federal code reference states "*Food*" means (1) any food or food product for home consumption...". This definition leads us to believe the exemption is limited to groceries sold at retail, raising two concerns.

First, for example, liquid raw milk leaving the farm would not be considered a 'grocery,' and if processed and sold within Oregon, it would be considered a taxable activity, thereby raising prices for consumers. Furthermore, a food processor who processes and packages, for example, fruits and vegetables will package both home-use packages and large restaurant use packages. Arguably bulk food suppliers and sales to restaurants would be a taxable activity, compounding the cost increase of food.

Additionally, we do not yet have clarity if the intent of the -1 amendments is to exempt farm products that can be consumed whole, such as apples, strawberries or cherries, from

the definition of Oregon sales. At the point of sale from the farm, they meet the 7 U.S.C. 2012(k) definition, while milk, grains, and meat do not.

The second concern with Section 3 (11) is “(2) *seeds and plants for use in gardens to produce food for the personal consumption of the eligible household...*”. This underscores the concern that the totality of food production is not exempted. A nursery would have to apportion their production that is sold directly to the consumer; however selling plant starts or rootstock to local farmers would be considered a taxable activity.

If the intent is to exempt food from increasing in cost, the entire local supply chain needs to be considered. Farming behavior will be influenced by the impacts of this CAT, and when retailers and restaurants determine that shipping food in from out of state is an economic advantage, Oregonians lose the ability to buy local farm products and invest in the local economies and communities.

- In Section 3(Z) we appreciate the attempt to exclude the agricultural cooperatives. However, we are concerned that the draft language still subjects farmer-owned cooperatives and their owners to double or triple taxation. As drafted, it appears for in-state sales that a tax would be levied once for sale at the farm level, again at the cooperative level and finally on the owner farmers as part of their annual patronage. We do not believe the cooperative patronage would be considered ‘dividends’ under Section 3(1)(b)(X), but instead would be a type of revenue. A similar situation was created with the passage of Oregon’s corporate minimum tax. In 2011, the legislature passed a fix to ORS 370.090 to clarify that Oregon sales do not include agricultural cooperatives sales that are done with or for their members.
- Section 3 (15)(a) excludes the receipts of motor vehicle fuel. However, it is limited to on-highway uses. Oregon farmers and ranchers utilize off-road fuels, which are not subject to the highway trust fund tax. Often purchased in bulk, off-road fuels would be a taxable activity for the distributor, who would pass this added tax onto the local farmer. The legislature is already considering adding costs to fuel under House Bill 2020. Hitting farmers and ranchers with two tax increases on their fuels will have devastating effects.
- Section 3(1)(b)(H) exempts “*Proceeds received on account of payments from insurance policies, except those proceeds received for the loss of business revenue*” from a business receipt. This brings into question if crop insurance payments administered through the Federal Farm Bill for crop disaster, trade mitigation, or price guarantee programs is considered income. Crop insurance specifically is not designed to make the farmer or rancher whole, but rather cover lost expenses. Subjecting a farmer’s crop insurance payment to a gross receipts tax is adding yet another hardship on top of an already difficult situation.

Also, the legislature continues to emphasize increased conservation and environmental stewardship on working lands. We are constantly looking for ways to increase assistance to farmers and ranchers for incentivizing carbon sequestration, soil health, pollinator and wildlife habitats – programs administered by the USDA under the Conservation Title of

the Federal Farm Bill. These payments would appear as a business receipt but are specifically earmarked and conditioned for conservation purposes. As drafted the CAT would subject these activities to a tax and simultaneously reduce program participation and effectiveness.

- Section 9 allows subtractions for either labor or inputs. However, do contract services and labor qualify for a labor subtraction in the -1s? Due to the specialized and seasonality of much agriculture work, farmers and ranchers rely on sometimes large labor crews to successfully harvest farm crops. Workforce crews used to hand harvest, produce crops, seed, or support plant health are a significant cost to Oregon farmers and ranchers and should be eligible for subtraction.

While labor is a significant cost for many agricultural producers, it is not the case for all; many farm operations may elect to subtract their input costs. However, the definitions include of “*in accordance with section 471 of the Internal Revenue Code*” would exclude most farmers and ranchers cost of materials incurred in the creation of a good or service. Section 471 costs are costs that the taxpayer already has capitalized to inventory. This definition works for manufacturers, but not for agriculture. Besides labor, most farmers most significant expenses are fuel, seeds/plants, chemicals/fertilizer, repairs, electricity, farming supplies, and capitalized items like new equipment.

The weight of the proposed CAT on Oregon farmers and ranchers coupled with the growing number of tax proposals and other business mandates this session would have dire consequences on Oregon’s agriculture community. Even for the farms and ranches who fall below the \$1,000,000 threshold and not subject to the CAT, the goods that are utilized on the farm will increase in price under the -1s. These increases and the ambiguities we have identified are of significant concern to Oregon agriculture. As Oregon’s products are shipped around the world, maintaining economic competitiveness is paramount to keeping local agriculture production viable.