

Testimony of Wilbur-Ellis Company LLC Before the

Oregon Joint Committee on Tax Expenditures

Regarding HB 2164

Creating Parity on the Gross Receipts Tax Between Cooperatives and

Other Businesses in Competitive Activities

June 11, 2019

Started as a specialty import-export brokerage trading company in 1921 in San Francisco by classmates from the University of Washington, Wilbur-Ellis has grown into one of the largest family-owned companies in the world. With significant operations and customer base in Oregon, Wilbur-Ellis is now a leading provider of fertilizer and crop protection for farmers and agricultural operations in the U.S.

This testimony is submitted today regards the enrolled HB 3427 now in law and proposed amendments thereto in HB 2164 with the -1 amendments. We seek to ensure that the virtues of agricultural cooperatives are preserved without the creation of competitive advantages for cooperatives in competitive business lines.

Background

As general background, agricultural cooperatives generally engage in marketing or “pooling” of products produced by members and selling goods and services to those members. There are several transactions to consider on the marketing side.

- 1) As to “buy/sell” cooperatives or “pooling” cooperatives, the farmer-producer sells to the cooperative and the cooperative sells to the ultimate purchaser. In those two transactions, the proposal should have only one taxable sale as the result of subparagraph (TT) of section 58 of HB 2164 with the -1 amendments that exempts the sale from the farmer-producer to the cooperative from the definition of “commercial activity,” thus exempting that transaction from the new tax. However, paragraph (4)(f) of that same section excludes farmers’ cooperatives in section 521 of the Internal Revenue Code from paying the new tax in any case. Thus the aforementioned amendments to HB 2164 entirely exempt the sale of the product from the farmer to the cooperative and the cooperative to the ultimate buyer. We argue that this set of transactions should be taxed one time to remain in parity with non-cooperative operations.

- 2) In a bargaining cooperative in which the farmer-producer sells directly to the ultimate user at a price negotiated by a cooperative, the farmer-producer would pay the tax as subparagraph (TT) relates only to sales to cooperatives. Again, there would be one taxable sale, which would at least be in parity with the sale from farmer-producer to the ultimate user that did not have the benefit of the bargaining cooperative.

As noted, cooperatives also sell goods and services to members and, in this way, are in direct competition at the same level as many non-cooperative entities. This would include sales of things like seed, fertilizer, and other products. Comparing these transactions:

- 1) The non-cooperative agricultural company sells goods and services to a farmer-producer. Under the new law, this is a taxable sale.
- 2) The cooperative sells goods and services to a farmer-producer. Without striking paragraph (4)(f) of section 58, this would not be a taxable sale and would create a competitive advantage for the cooperative.

In order to get to a rough parity with other commercial entities without offending the policy virtues intended for cooperatives, we suggest the following:

- Either:
 - o Strike the language of paragraph (4)(f) altogether, leaving the transaction between the farmer-producer and the cooperative as the only exempt transaction;
- Or:
 - o Should shielding the marketing functions of the cooperative system be of paramount policy preference, at least create parity in the function of providing goods and services by:
 - Adding a new exemption from the definition of “commercial activity” that includes sales of agricultural goods from cooperatives to buyers but explicitly does not include the sales of goods and services to member farmer-producers; or
 - Expanding the language of paragraph (4)(f) so entities in section 521 of the Internal Revenue Code are only not considered taxpayers to the extent of their sales related to marketing services.

Taking all this together, we believe that such changes would allow cooperatives to remain a vital element in the agricultural stream of commerce while bringing tax parity to those activities in which cooperatives and non-cooperatives compete directly.

We thank the committee for the opportunity to submit this testimony.