

Oregon State Legislature
Senate Committee on Finance and Revenue
Senator Ginny Burdick, Chair
Senator Brian Boquist, Vice-Chair

VIA E-MAIL

Re: Senate Bill 312

Dear Chair Burdick, Vice-Chair Boquist and Committee Members:

I am writing today to provide technical guidance related to the implementation of S.B. 312, which if enacted would allow the Legislative Revenue Office to publicly disclose taxpayer information. If S.B. 312 is enacted, legal challenges will likely follow as the legislation appears to violate both federal law and the U.S. and Oregon Constitutions.

Prohibition of Federal Returns and Return Information

Federal law and the Internal Revenue Service Taxpayer Bill of Rights prohibit the disclosure of federal “returns” and “return information” except in very limited circumstances. S.B. 312 raises significant taxpayer privacy issues, as the publishing of the report to the public may result in disclosure of information ultimately found on federal tax returns.

Internal Revenue Code (IRC) § 6103(a) mandates that a taxpayer’s “[r]eturns and return information shall be confidential” and prohibits an “officer or employee of any State” from “disclos[ing] any return or return information obtained by him in any manner in connection with his services as such an officer or an employee or otherwise . . .”

While the term “return” is defined to include returns filed with the Secretary of the Treasury (or the Secretary’s delegate, e.g., the Commissioner of the Internal Revenue Service), IRC § 6103(b) defines the term “return information” very broadly to mean “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . .”

Thus, any taxpayer information subject to the public disclosure requirements in S.B. 312 and derived from a taxpayer’s federal return or federal return information would be confidential. Therefore, the disclosure of such information by the Legislative Revenue Officer would be prohibited pursuant to IRC § 6103. While the reportable items outlined in the legislation appear to include only information from the state tax return, such items may stem from the federal return and amount to the release of “return information” from the federal return that is protected by IRC § 6103. For example, the disclosure of Oregon taxable income claimed under Oregon law may amount to the release of return information as federal taxable income

is used as a starting point to determine Oregon taxable income. Further, the disclosure of certain tax expenditures claimed under Oregon law are likely to amount to “deductions” protected as “return information” under IRC § 6103 since Oregon conforms to the certain federal deduction permitted under the IRC that results in Oregon tax expenditures. Consequently, if passed, S.B. 312 is likely to result in significant litigation as to what information falls within the purview and protections of IRC § 6103 as “return information” as this is not a settled area of the law.

If S.B. 312 were found to violate IRC § 6103 disclosure prohibitions, the legislation could jeopardize Oregon’s access to federal tax information critical to administering the personal and corporate income taxes as the IRS will be prohibited from sharing taxpayer information with the state.¹ Further, the state and its employees could be subject to criminal penalties including a fine of up to \$1,000 or up to one-year imprisonment, and the cost of prosecution for the willful unauthorized inspection of return or return information.²

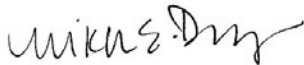
Constitutional Infirmities

S.B. 312 also raises several constitutional concerns as the legislation exclusively targets multistate taxpayers. The legislation requires the public report to include the tax information for C corporations that have an Oregon apportionment percentage of less than 100 percent. Thus, only C Corporations that operate both within and outside the state – and not C corporations that operate exclusively within Oregon – would have their taxpayer information disclosed to the public.

This is likely to raise concerns under the Commerce and Equal Protection Clauses of the U.S. Constitution as well as concerns under the Uniformity Clause of the Oregon Constitution as an attempt to discriminate against corporations with operations outside of the state. Disclosing only the information of C Corporations that have operations outside of the state is arbitrary and unfair, and the state would have a hard time demonstrating a rational basis for this discriminatory provision in the inevitable litigation that would follow if the bill was enacted.

Thank you for your attention to these matters. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Nikky E. Dobay

¹ IRC § 6103(d)(1).

² IRC § 7213A(b).