



Oregon Society of Certified Public Accountants

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2022 Oregon Legislative Assembly Hearing – Senate Committee on Finance and Revenue Written Testimony for SB 1524 – **Opposition** to Sections 3 and 4

DATE: February 7, 2022 – 8:00 a.m.

Good morning Chair Senator Beyer, Vice-Chair Senator Boquist and Members of the Senate Committee on Finance and Revenue.

On behalf of nearly 4,000 members of the Oregon Society of Certified Public Accountants (OSCPA), we respectfully submit written testimony in **opposition to Sections 3 and 4 of SB 1524**.

BACKGROUND:

Why opposition to SB 1524 Sections 3 and 4 is warranted:

SB 1524 requires that a Pass-Through Entity (“PTE”) make the election to pay the pass-through business alternative income tax by the 15th day of the fourth month of the tax year. For most PTE’s, this would be April 15 of their current year.

In fact, for the 2022 tax year if this legislation is enacted, a taxpayer and a return preparer would **NOT** be able to make a timely election. This law is effective 91 days after sine die. Thus, this law would not be effective until June or July, well beyond the April election date. Further, even if there was an emergency enactment clause to trigger immediate enactment, taxpayers would only have a matter of weeks to make the election. We do not believe that taxpayers and practitioners can be educated in this short time period, nor do we believe that taxpayers and tax practitioners will have enough information to know whether the election will be appropriate within that timeframe. This would be a trap for the unwary.

By requiring this election, we believe that this new requirement will create significant issues for taxpayers and tax return preparers. Specifically, our concerns relate to:

- This poses significant challenges to tax planning activities. How can a taxpayer know in April whether to make the election or not? Problematically, a taxpayer would have to predict what their situation will be in December to be able to make the election months prior in April.
- Taxpayers might experience substantial changes that either make the election apply to them (i.e. shareholders or partners change during the tax year), and in some cases, might pose a situation where a pass-through entity's election is invalidated by those changes. (What happens if, for instance, a partnership admits a corporate partner, which would make them ineligible for the election, after they have already made an election for the year? Alternatively, what happens

if an ineligible partner leaves the partnership, thus making it eligible for the election later in the year?)

- This poses challenges for those who move into Oregon after the election was due because they would not have had the opportunity to make the election.
- For tax planning purposes, this also poses significant challenges for entities that might undergo a significant business transaction, or that might face substantially different operating conditions (like COVID) that might make the election inapplicable or inadvisable to the entity for a particular year.
- This poses a significant cash flow issue if someone elects in and then their election is invalidated. They must wait until the filing of a return in the following year to receive a refund of their estimated payments. In some instances, they may have to pay the tax on their individual while still waiting for the refund to the entity. They have effectively paid the tax twice for a period of time. Individuals may also face substantial prepayment penalties if they were under the impression that the PTE was going to pay the tax and they reduced their individual prepayments accordingly.
- This new requirement could be inequitable to many taxpayers who do not have access to advice from a knowledgeable tax professional. For example, if a small business owner purchases a tax preparation software, the software isn't available and updated until January of the following year. How could this person even know to make the election? This could also put small businesses at a disadvantage, as they often do not have the time or money to pay for tax planning advice from professional tax preparers before they get to tax filing season.

We recognize the need for the collection of estimated payments related to this tax. However, we believe there are other statutory mechanisms which can be created or modified to require the estimated tax payments, without requiring that the election be made earlier than the date (including extensions) that the entity's return is required to be filed, as was outlined in the original SB 727 language.

RECOMMENDATION:

On behalf of Oregon Society of CPAs, we respectfully encourage you to **oppose sections 3 and 4 of Senate Bill 1524.**

Thank you for the opportunity to share our feedback with members of the committee.

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