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503 697 4118 — DELAPCPA.COM — 5885 MEADOWS ROAD, No. 200 — LAKE OSWEGO, OR 97035

2024 Oregon Legislative Assembly Senate Committee on Finance and Revenue Written Testimony Regarding SB 1526

SUPPORT WITH AMENDMENTS

February 6, 2024

Dear Chair Meek, Vice Chair Boquist, and Members of the Committee:

We write today in **SUPPORT** of SB 1526, which would, among other things, extend the benefits of the Oregon Pass-Through Entity Elective Tax (PTE-E), also referred to as the business alternative income tax, to entities with trusts as owners.

While we are submitting this testimony on our own behalf, we are two of Oregon's leading experts on the PTE-E program, and have dedicated many hours to understanding, planning for, interpreting, and collaborating with the Department of Revenue on this program. We have also educated hundreds of CPAs, the tax preparer community, individual taxpayers, and others on this program. We are both licensed Certified Public Accountants in active practice and together have over 50 years of combined experience in the accounting profession, with the vast majority of that spent on state and local tax practice and issues.

SB 1526, Section 9, would add trusts to the types of qualifying members of pass-through entities that can elect to pay the PTE-E tax at the pass-through level. We believe that adding trusts to the list of qualified entities is an equitable solution that would ensure that more Oregon small businesses have access to this elective tax program. Even the smallest businesses can utilize this ownership for legal, estate planning, or other purposes – in our experience, trusts are not reserved for the wealthy. They are often used by Oregon small businesses and their owners as efficient and cost-effective estate planning vehicles. Use of a trust for ownership purposes should not disqualify these small businesses from the benefits of the PTE-E program.

We believe that SB 1526 could be clarified to ensure that estates of deceased members of pass-through entities would also be qualified members for purposes of the PTE-E tax. We suggest that this could be accomplished by replacing "Trusts" with "Fiduciaries subject to tax under ORS Chapter 316," which would encompass both trusts as well as estates. That would also eliminate any concern that certain trusts taxed as C-Corporations would be qualified. Estate ownership often arises in the context of small businesses, and this change would provide more certainty that the PTE-E election will be allowed even when an owner dies during the year.

Cobalt, P.C.

2009 NE Alberta St., Ste. 200
Portland, OR 97211

(503) 239-8432

www.cobaltcpa.com

info@cobaltcpa.com

Further, we strongly support an additional amendment, not yet proposed, which would correct certain language in the existing PTE-E statute under which, under the Department of Revenue’s determination¹ related to this provision, the pass-through entity itself is not required to (or allowed to) add back the pass-through entity elective tax already deducted. Aligning the methodology between the entity and member calculations will reduce complexity and allow individuals to accurately calculate and pay their PTE-E tax on time. Eliminating this complexity should also increase compliance, especially for taxpayers who prepare their own tax returns. We believe this complexity was introduced inadvertently in the 2022 PTE-E amendments.

Finally, we respectfully request the Committee consider an additional amendment to allow taxpayers to carry forward overpayments to the following year’s estimated taxes. This provision, which already exists in Oregon personal income tax (and corporate tax) law, has a positive effect on State cashflows (since the State does not have to refund these amounts to taxpayers, just to see them turn around and repay the amounts at the next quarterly payment deadline) and is a common feature of income tax programs. Aligning with existing Oregon and Federal statutes reduces complexity and encourages compliance, especially for small businesses and individuals who prepare their own tax returns.

We appreciate the opportunity to present this testimony. We are also happy to make ourselves available for consultation with Legislative Revenue Office staff or individual legislators as requested.

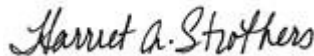
Very Truly Yours,

COBALT, P.C.



Adam R. K. Abplanalp, CPA
Managing Partner & Chief Executive Officer

DELAP LLP



Harriet A. Strothers, CPA
Partner & Chief Administrative Officer

¹ “Revenue issues determination for the treatment of the PTE-E addition.” Oregon Department of Revenue, February 15, 2023:
https://www.oregon.gov/dor/programs/businesses/Documents/DOR_Statement_on_PTE-E_Feb%2015_2023.pdf