THE NEED FOR CORPORATE TAX TRANSPARENCY IN OREGON

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Executive Summary / What is corporate tax transparency?

An effective democracy depends on the free flow of information. Yet, when it comes to one of the most prominent policy debates in Oregon – corporate taxes – little state-level information is available to guide local decision-making.

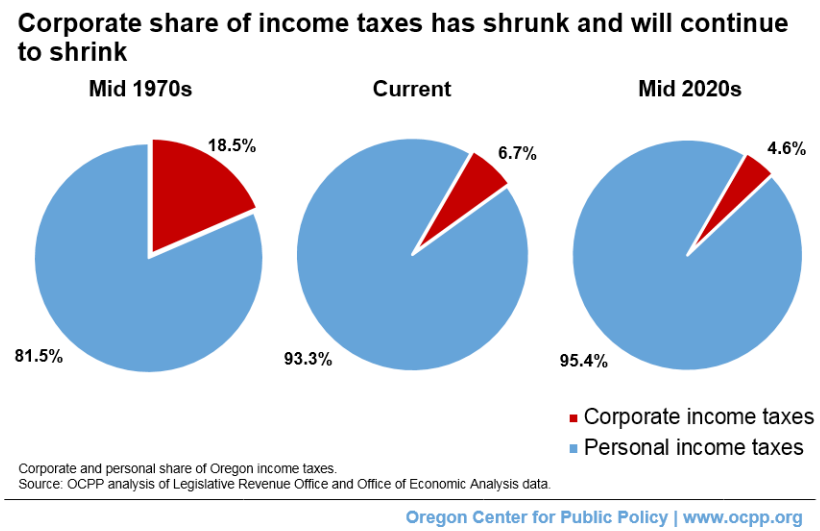
Every year, corporations pay billions of dollars in taxes to states. The structure and distribution of those revenues are important issues that citizens and policymakers must consider. Corporate tax disclosure, by making public the information needed to evaluate corporate tax policy, will improve our ability to consider these issues and make a valuable contribution to tax policy in Oregon.

"Tax policy at the state and local level is based on assumptions, and proposals to change policy are difficult for lawmakers and the public to fully evaluate."

In the 1990s, following scandals at Enron and WorldCom, Congress passed bipartisan reforms that bolstered the disclosure of corporate tax information to the Securities and Exchange Commission. Since then, publicly traded companies have disclosed a great quantity of financial information so that investors and policymakers could make more informed decisions.

Publicly traded companies disclose some state tax information in the aggregate, but the amount of information available to local decision makers is vastly less than what investors and policy makers at the national level demand. As a result, tax policy at the state and local level is based on assumptions, and proposals to change policy are difficult for lawmakers and the public to fully evaluate.

At the same time, a decades-long decline in the share of taxes paid by corporations in Oregon has led many to question if there is something seriously wrong with the state's tax policy. In the 1970s, the corporate income tax represented 18.5% of income taxes collected in the state. That share has fallen to 6.7% today and is projected to shrink further in the years to come.[1]



During this same time period corporate profits in the U.S. have increased greatly.[2] Are corporations using schemes to avoid paying state taxes in Oregon? Are corporate taxes down as a result of incentives provided by the state, and if

1 Oregon Center for Public Policy http://bit.ly/2z76pCy
2 Federal Reserve Bank of St. Louis http://bit.ly/2A1iqrt

so, are those incentives having their desired impact? What is the effect of offshoring on Oregon's corporate income tax? Are state tax laws creating inadvertent winners and losers?

These are questions Oregon can't answer without company-specific corporate tax disclosure. Yet they may hold the key to writing effective tax policy in the state.

In 2018, Oregon voters will have an opportunity to require tax transparency from publicly traded companies. There are several important reasons to enact a corporate tax transparency law.

- **To make sure the tax code treats corporations fairly. Oregon laws should create a level playing field for businesses to operate, and not inadvertently create winners and losers.** However, the state currently treats businesses differently depending on their industry and location. The result is that some companies tend to pay higher effective taxes than others. Tax transparency brings those disparities to light so they can be addressed. By the same token, tax transparency will help evaluate proposed legislation to create fair policy, and better identify any winners or losers.

- **To evaluate tax breaks.** Tax incentives can be powerful tools to promote economic development, or billion dollar boondoggles. Transparency about which companies are receiving, selling, or buying tax credits, along with information about those firms' workers, taxes, and profits, can help evaluate whether tax incentive programs are working, and who they are working for. Effective tax breaks generate a public good—they are not just a drain on public resources.

- **To promote accountability.** If corporations publicly report their taxes, they are less likely to cut corners or avoid paying their fair share. Public disclosure of tax information will shed light on tax dodging schemes that cost hundreds of millions of dollars in lost revenue. Sunlight is the best disinfectant.

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Prepared by Daniel Morris on behalf of SEIU Local 503 and Oregon AFSCME. We thank Dan Bucks, Peter Enrich, Daniel Hauser, Michael Mazerov, and Richard Pomp for their advice and contributions to this report.

November 6, 2017.

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What does IP 25 do?

Initiative Petition 25 (IP 25) would require publicly traded corporations to disclose financial information, including taxes paid, to the State of Oregon. After a waiting period, the disclosures would be made public.

After IP 25 becomes law, publicly traded companies will report state-level information similar to what they currently report to the SEC at the national level. Corporations would disclose to the Secretary of State how much they made in Oregon sales, how they computed their tax liability, and what they paid after claiming credits and losses carried forward. Corporations will explain how they computed taxable income by providing information about apportionment factors—what share of their property, payroll, and sales were in Oregon. Disclosures will also cover deductions for payments made to subsidiaries and affiliates; this is how corporations shift U.S. profits offshore to avoid taxes. Collectively, the information disclosed will give policymakers a much better picture of how corporations pay taxes and what methods they use to reduce their tax bills. The full, annotated text of IP 25 can be found in Appendix A.

IP 25 is drafted to provide the information policymakers need while minimizing administrative burden on corporate filers. Nearly all the information is already reported on different forms, so it will take minimal effort for most corporations to comply with the law—probably an hour or two. Similar information is already disclosed at the national level, much more rapidly, without making business less competitive. Corporations that shift profits offshore will have to report information on international tax avoidance schemes. That information is not currently reported to any authority and may take some time to compile.

IP 25 only affects publicly traded corporations and their subsidiaries and affiliates. The measure applies only to these public companies because they are already subject to much more expansive disclosure requirements at the national level. Privately-held corporations will not be subject to disclosure, but the information received from public companies will be sufficient for evaluating corporate tax policies. Oregon law does not differentiate corporations based on ownership; taxes on C corporations are the same for publicly traded and privately held companies.

Why is transparency needed?

Corporate tax disclosure would help illuminate the real-world outcomes of Oregon's corporate tax laws. The media, watchdog groups, legislators, and other public entities would be better able to hold the state accountable for writing effective laws that deliver their intended outcomes. Disclosure would shed light on needed reforms, and it would provide the data necessary to cut through political rhetoric when evaluating changes to corporate tax laws.

Tax incentives and credits

Intending to advance business development, Oregon has given out billions of dollars in tax breaks to publicly traded corporations.[3] Some of these tax incentive programs, like the Business Energy Tax Credit (BETC), ended up being a lot more expensive than intended. Thanks to disclosure of where those tax breaks were going, the news media was able to shine light on the tax credit program and show that it was out of control. Not only were more credits being awarded than the legislature had planned for, but disclosure helped identify problems within the Department of Energy, which administered the program. Disclosure led to the legislature reining in the program before it got even more expensive, and to changes in leadership at the Department of Energy. But many tax breaks have never been evaluated. Do industries in Oregon really need more tax breaks in order to grow and thrive? Without better information, it is hard to be sure.

3 Good Jobs First Subsidy Tracker http://bit.ly/2yZU4hy

If we knew about corporations' use of tax credits, their profits and tax liabilities, we could do a better job with tax incentive programs. Lawmakers could see if credits and exemptions were going mostly to profitable businesses, or helping out the companies that most need state support. Because property taxes are public information, reporters can more easily bring unfair tax breaks to light. For example, the Willamette Week newspaper showed how owners of forested estates are benefitting from a tax break for timber farms.[4] Another recent story highlighted a program for low- and middle-income homebuyers. In rapidly gentrifying areas, this tax break, which is passed along to the next buyer, often ends up benefiting high-income earners and not the people it was intended to help.[5] Attention on tax incentives like these can focus efforts to improve the tax system. But while property taxes are public, corporate income taxes are not. IP 25 will make information available for evaluating a broader range of tax incentive programs.

If we knew how corporations compensated their workers, Oregon could evaluate whether tax breaks were generating good jobs. The state has long been generous with tax breaks aiming to spur economic development, but voters should know if tax dollars are subsidizing businesses that pay wages so low that employees must rely on public assistance programs.

Better data to evaluate tax incentives means lawmakers can better act to support effective programs and end wasteful ones.

Offshoring

Many larger corporations shift income generated in the United States to subsidiaries set up in countries with no income taxes and weak disclosure and reporting laws. Federal tax law is too weak to prevent considerable offshore tax dodging. Today, over $2.5 trillion in corporate profits are kept offshore for tax purposes, reducing state and federal revenues by hundreds of billions of dollars each year.[6] Oregon lost an estimated $225 million to offshore tax dodging in 2011.[7]

If we knew which countries corporations were using to stash their profits, we could protect revenues from offshoring. HB 2460 (2013) requires corporations, when filing their Oregon income taxes, to count income booked to subsidiaries located in a group of countries known to be tax havens. It's a simple step that prevents a lot of tax avoidance; HB 2460 was expected to raise an additional $42 million during the 2015-17 biennium. But for the law to be effective it must cover all countries corporations are using to dodge taxes.

As corporations switch up their tax avoidance schemes, Oregon laws need to be updated to stay current. The Oregon Department of Revenue prepares extensive reports for the Legislature, recommending changes to the tax haven list. However, in 2017 the Legislature failed to pass a bill to update the list. Under IP 25, corporations would report payments made to offshore subsidiaries, and disclose which countries those subsidiaries were located in. Disclosure of the location of all foreign subsidiaries would let lawmakers know where to direct their efforts to stop tax avoidance.

Winners and losers: small businesses vs big businesses

Lawmakers routinely change tax laws to the benefit of one industry over another. For example, SB 28 (2017) changed the way Oregon computes corporate income taxes for companies selling services, not tangible products. The change should (in theory) bring in more revenue from out-of-state companies that currently pay little or nothing. Big winners are likely high tech services companies, like AWS Elemental. SB 28 could save Amazon (the corporate parent of AWS Elemental) millions of dollars in taxes over time. The impact on startups and other companies, however, is unclear.

If we knew what corporations paid in taxes, we could make sure Oregon's tax code is not inadvertently creating winners and losers. Instead of making guesses based on aggregated numbers, lawmakers could see how changes would affect specific companies—and the impact of those changes relative to corporate profits and current taxes. Lawmakers could pass laws to ensure corporations were paying their fair share of taxes or make better more targeted tax decisions to help grow the economy.

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4 Willamette Week http://bit.ly/2gQhr4U
5 Willamette Week http://bit.ly/2xDMNCM
6 Citizens for Tax Justice http://bit.ly/2yhqAP5
7 U.S. PIRG http://bit.ly/1lvH8m9

It's better with transparency

Oregonians need good information to make informed decisions. Before buying a house, shoppers can see how much they will pay in property taxes and read disclosures from property sellers. Food labels provide nutrition information about things we eat and drink. By the same token, lawmakers need good information to develop good policies. Now they can see data on salaries and pension payments of individual public sector workers, along with state contracts and expenditures. We can see how much corporations spend lobbying the legislature and how much they contribute to political campaigns. Corporate tax transparency is consistent with these other data being public.

Corporate disclosures are nothing new. The Securities and Exchange Commission (SEC) mandates public disclosure of all aspects of publicly traded corporations' finances. That includes corporations' profits, executive compensation, total income taxes paid, and a detailed narrative on their business goals and the markets they serve. Additional disclosures required by IP 25 are small in comparison.

Operating a corporation is not a right. It's a privilege granted by states. There are many benefits to incorporating a business, such as protecting individual shareholders from liability. In exchange for those benefits, corporations are subject to certain taxes and various reporting requirements. Tax information for public corporations should be public, too.

Debunking arguments against transparency

Corporations arguing for secrecy over sunlight is nothing new. Fracking companies resisted disclosing which chemicals were being injected into the ground, arguing that the recipe for fracking liquid was proprietary.[8] Corporate lobbyists fight disclosures of political spending, saying they "limit the business community's ability to engage in political and policy debates."[9] One of the Trump administration's first official acts was to roll back an Obama-era rule requiring oil and gas companies to disclose bribes made to foreign governments. Petroleum industry lobbyists argued the disclosure would put U.S. corporations at a disadvantage to foreign competitors.[10]

When it comes to corporate tax transparency, the most common arguments in opposition invoke privacy, competitiveness, and the risk of disclosures being misunderstood by an unsophisticated public. None of these arguments hold water. Following are brief responses to common arguments; for more thorough discussions, please see Professor Richard Pomp's authoritative 1993 paper, "Corporate Tax Policy and the Right to Know." [11]

Company-specific Disclosure Would Not Violate Corporate Taxpayers' Right to Privacy

Their claim: Taxpayers have a justifiable expectation of privacy.

The truth: Personal income tax filers may have an expectation of privacy, but corporations issuing stock that is traded on public stock exchanges long ago ceded any "rights" they had to keep their financial affairs private. Publicly traded companies affected by IP 25 already disclose far more detailed information to investors on a quarterly basis. None of those companies are complaining SEC disclosures violates their privacy rights.

Disclosure is Unlikely to Lead to the Harmful Release of Proprietary Information

Their claim: Disclosure will reveal sensitive information to competitors, making companies less competitive.

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8 Robertson & Chilingar http://bit.ly/2ltdisU
9 Huffington Post http://bit.ly/2hqBwjd
10 USA Today https://usat.ly/2w0TQUI
11 Corporate Tax Policy and the Right to Know http://bit.ly/2zV5h22

The truth: Competitors already access far more meaningful information through other means. There is no evidence that SEC disclosure has made any company less competitive, and those disclosures are far more thorough, frequent, and timely than what is required by IP 25. Oregon tax disclosures, especially considering IP 25 provides for a three-year delay in the release of information, would provide no meaningful information to competitors.

Tax transparency will help, not hurt, Oregon's business climate

Their claim: Tax transparency will force corporations to defend publicly how they calculate their taxes. Corporations who follow the law and use deductions or credits may be unfairly demonized. Confusion over the complexities of corporate tax filings could lead to misinformation. These developments will create a poor business environment and could harm Oregon's economy.

The truth: The disclose under IP 25 is minimal compared to what is disclosed at the national level. That disclosure is one of the U.S. economy's strengths, rather than a weakness. Transparency and the rule of law gives investors confidence in the basic integrity of the U.S. business system. Yes, there will always be some problems of corruption and cronyism, but sunshine helps solve those problems more quickly in the U.S. than in other countries. If Oregon is a leader in transparency, it can gain a reputation as a place where integrity and fair play are valued and upheld. In the long-term, that is a business plus, not a business minus.

Appendix - IP 25 with annotations

IP 25 Text	Annotation
The People of the State of Oregon enact this law, to be added to and made part of ORS Chapter 317.	
SECTION 1.	
(1) All publicly traded corporations (including their affiliates and subsidiaries) that are required to file an excise or income tax return under ORS chapter 317 or 318 shall file with the Secretary of State the statement described in Section 2 if of this Act.	Only publicly traded corporations are subject to the disclosure requirements, not privately held ones. But if the publicly-traded parent corporation is operating in Oregon through a subsidiary corporation or affiliate (for example, a corporation in which the out-of-state corporation owns less than a 50 percent interest), the subsidiary or affiliate, although not itself publicly traded, still must file the disclosure statement.
(2) For tax years ending between and including January 1, 2016 through December 31, 2017, the statement required by this section must be filed with the Secretary of State on or before March 15, 2019.	IP 25 provides for a 3 year delay in the reporting of corporate tax information. But to avoid such a delay in the public availability of useful information following enactment of IP 25, it requires retroactive reporting of tax year 2016 and 2017 data.
(3) For all tax years thereafter, the statement required by this section must be filed at the same time as the corporation's state tax return is filed, but no later than November 30 of the year following the end of the previous tax year.	
SECTION 2.	
The statement required under section 1 of this Act shall be on a form and filed in a manner prescribed by the Secretary of State and shall contain:	Most of the information required to be disclosed can be found on Form OR-20, Oregon's corporate income tax return
(1) The name of the corporation, the address of its principal executive office, the corporation's business activity code, the type of corporation and the name and address of its registered agent;	
(2) The corporation's 4-digit North American Industry Classification System code number;	Knowing the corporation's industry code will facilitate analyses of whether particular industries are (dis) advantaged by Oregon's corporate tax policy.
(3) A unique code number, assigned by the Secretary of State, to identify the corporation, which code number will remain constant from year to year;	Using consistent Oregon-specific company identification numbers will make it possible to analyze specific corporations' tax payments over time while avoiding potential legal issues that could arise in using the corporations' federal tax ID numbers.

(4) The name and principal address of any corporation or other entity that owns, directly or indirectly, more than 50 percent of the voting stock of the corporation filing the statement;

As noted above, the corporation that is taxable in Oregon may be a subsidiary or affiliate of a publicly-traded parent, not the parent itself. This provision requires identification of the parent, which may not be readily identifiable from the subsidiary or affiliate's name.

(5) State Taxes. The following tax-related information reported on the corporation's income or excise tax return filed under ORS chapter 317 or 318, or, in the case of a corporation included in a consolidated state return, reported on the consolidated state return:

a. Taxable income reported on the corporation's U.S. corporate income tax return;
b. Total additions claimed, each addition individually enumerated;
c. Total subtractions claimed, each subtraction individually enumerated;
d. Apportionment percentage used to calculate the corporation's taxable income in Oregon, including the apportionment factors for property, payroll and sales, individually enumerated;
e. Net operating loss deduction;
f. Oregon taxable income;
g. Total tax liability in Oregon before credits;
h. Tax credits claimed and carryforward credits, with each credit individually enumerated;
i. Total tax due;
j. Total property or real estate income and interest in Oregon;
k. Total wages and compensation in Oregon;
l. Total sales in Oregon;

Most of these are the key line-items on corporate tax returns that determine the corporation's final tax liability. They will enable users to determine the underlying sources of low tax liability for low-liability corporations.

Item (d): Corporations that do business in multiple states pay Oregon taxes on only a portion of their income. The apportionment factors describe how much of a corporation's operations are located in Oregon, and what share of their sales take place here.

Item (e): These are prior-year losses carried forward to reduce current year taxes.

Item (h): Credits are enumerated on form OR-ASC-CORP

Items (j), (k), and (l) are reported by multistate corporations filing apportioned returns using Form OR-AP. Nearly every corporation that would be required to submit a disclosure form files apportioned returns, so they are already providing this information. For FY2014, among C corporations with over $25 million in Oregon sales, 93% filed apportioned returns. Even though Oregon uses a single sales factor for corporate tax apportionment, filers still report their payroll and property factors as well.

(6) Domestic and Offshore Activity Not Otherwise Reported. Total deductions for management services fees and for royalty, interest, license fees and similar payments made for the use of intangible property to any affiliated entity that is not included in the consolidated state return, if any, that includes the corporation and the names and countries of domicile of the entities to which the payments were made.

This information is not currently collected or reported anywhere. It would force companies to disclose how much of their profits they are shifting to offshore subsidiaries that are not included in their tax filing. Companies that don't use offshore subsidiaries to dodge taxes will not have to do any additional work to comply with this provision.

SECTION 3. Any corporation submitting a statement required by section 2 of this Act shall be permitted to submit supplemental information that, in its sole judgment, can facilitate proper interpretation of the information included in the statement.

Corporations may choose to disclose additional information that provides context to better understand their taxes. Additional disclosures will make it less likely the information will be misrepresented or distorted.

SECTION 4. If a corporation files an amended tax return, the corporation shall file a revised statement within 60 calendar days after the amended return is filed. If a corporation's tax liability for a tax year is changed as the result of an uncontested audit adjustment or final determination of the Department of Revenue or by the Oregon Tax Court or Oregon Supreme Court, the corporation shall file a revised statement within 60 calendar days after the final determination of liability.

Corporate tax returns are amended frequently. This provision ensures that policy makers will have access to the most current tax information.

SECTION 5. A statement submitted under sections 1 to 4 of this Act is a public record to be maintained in the office of the Secretary of State. The Secretary of State shall make all information contained in the statements for all filing corporations available to the public on an ongoing basis in the form of a searchable database accessible through the Internet. No statement for any corporation for a particular tax year shall be publicly available until the first day of the third calendar year that follows the calendar year in which the particular tax year ends.

This section ensures corporate disclosures will be posted online for the public to access. A set delay before publication will ensure the disclosed information will be of no use to competitors. The intention of IP 25 is to protect corporate filings from public disclosure for a period of three years. In order to get actionable information before 2021, Section 1(2) requires disclosure of information from 2016 and 2017 before March 15, 2019. The 2016 disclosures would be make available in 2019.

SECTION 6.

(1) The accuracy of the statements submitted under sections 1 to 4 of this Act shall be attested to in writing by the chief operating officer of the corporation and shall be subject to audit by the Department of Revenue under the normal procedures applicable to corporate income tax returns.

(2) The Secretary of State may impose annual penalties of up to 0.25% of the corporation's gross receipts in Oregon on any corporation that fails to comply with the requirements of section 1 to 4 of this Act. The penalty may not exceed $1 million annually. The Secretary of State shall publish the names of any corporation subject to a penalty.

This section empowers the Secretary of State to penalize corporations that do not comply with the disclosure requirements.

(3) The Secretary of State may promulgate any rules necessary to implement and enforce the provisions of this Act.

The Secretary of State is empowered to develop administrative rules that will govern the implementation of the new law.