



TESTIMONY

JOINT COMMITTEE ON TAX EXPENDITURES

June 11, 2019

HB 2164 -8 Amendment

Oregon's agriculture community remains concerned about the implications of HB 3427 Enrolled, which establishes Oregon's first Corporate Activity Tax (CAT). Investments in our schools, classrooms, and career and technical education to provide a quality learning experience and opportunity for Oregon's students is essential. However, the CAT exposes Oregon agriculture, the second largest traded-sector industry in Oregon, to higher costs, and considerable uncertainty. Farmers and ranchers operate in a dynamic market where year-to-year inputs, sales, and labor vary, and a large variance could place a family farmer or rancher over the threshold and trigger an unexpected tax burden.

HB 3427 Enrolled divides farmers by treating segments of agricultural products differently, disincentivizes sale of local products to Oregonians, and undermines Oregon's beloved farm to school program and the children it serves. The new tax law causes market distortions, taxes products the legislature has long exempted and requires a level of complexity in implementation and compliance for farmers that far outweigh its minimal revenue potential.

HB 2164 is a cleanup bill of a substantial policy that moved with minimal public engagement. The purpose -8 amendment is designed to provide relief to the hard-working Oregonians who provide quality, local food at low margins in a highly competitive global economy. The -8 amendment is technical as it does not exempt agriculture in its entirety but exempts the receipts of farmgate sales. Many of these sales are the lowest price of the product, required by law, or are sales of local food to local consumers. Adopting the amendment won't eliminate the pyramiding of costs of food and other agriculture products, but it will mitigate the impact and provide equitable relief to all of Oregon's farmers and ranchers.

In the time HB 3427 passed groups have begun to realize the market divisions, economic inequities, and impacts the CAT will have. A few areas we understand the -8 amendment to HB 2164 could provide technical relief:

Treating neighboring farms, products, and local markets equitably across Oregon.

Basic tax policy fairness requires similarly situated individuals and businesses to be taxed the same way. HB 3427 not only taxes identically-situated neighboring farms differently, but it can also treat products of the same plant or the same field differently based solely on where identical products are destined. For example, when a wheat farmer delivers a load of grain to the elevator and a percentage of that crop is sold to a local bakery, that farmer now has a tax liability for an unknown, unplanned portion of that crop. That determination is not the farmers, from planting to harvest, that farmer can never predict or plan what their tax liability will be. This same dynamic repeats with berries, tree fruit,



hazelnuts, vegetables, wheat, or any ag product that is either “bulk” or processed before reaching its end consumer.

Keeping Oregon farming and ranching families competitive

Washington’s Business Activity Tax includes a full exemption for the sale of farm and ranch products as they leave the farm. Oregon’s CAT excludes most, but not all. That model invests in local supply chains and rural jobs that support whole communities. By not exempting at the farmgate level, those who will be impacted the most are the local farmworkers, processors, truckers, and supply stores that depend on Oregon’s agricultural products. Oregon should be incentivizing local sales, not encouraging their exports.

Prevent taxing required food safety processes

Under the new tax law sales from the farm to a processor is a taxable activity. The current exemptions focus on the end product but levy taxes on required food safety steps to ensure those end products are safe. By relying on the SNAP definition to determine if a product is a “grocery” and promoting that unprocessed food will not be taxed, ignores critical taxable activities that will raise the cost of food. Fluid milk leaving a dairy has to pasteurize before being allowed to travel interstate. Many dairy farmers do not invest in expensive pasteurizing equipment and sell the fluid milk to an operation that will pasteurize and the wholesale. The processor enjoys being tax exempted, while the dairy farmer is taxed for required activity. Fresh fruits and vegetables are subject to similar situations under the Federal Food Safety and Modernization Act (FSMA) of 2011.

Uphold legislative intent and encourage global economic competitiveness.

A farming or ranching family must obtain certification from a wholesaler at the time of sale (Section 58, Y) that the product is leaving the state to exempt those sales from the tax. Wholesalers may not know the ultimate destination of the product at the time of sale and unable to provide this certification. The agriculture commodity economy is dynamic and responds to global shifts and local needs. Some wholesalers consider the destination of their products to be proprietary trade secrets and will not disclose this information to the farm and ranch families they buy from. If a farmer or rancher does not receive this certification, their product will be taxed even if it is destined for out-of-state customers.

Stop taxes that will hurt Oregon’s farm to school program

The Legislature is considering a sizeable increase in the Farm to School Program, a supported program. The State of Oregon and many farm families have invested over recent years to bring healthy, locally grown fruits and vegetables to Oregon’s school children. It was clarified on the House Floor during the debate that farmers are not wholesalers. These local food products have to be sold directly to schools the sale is considered a taxable activity. Farmers who supply local, nutritious food to our developing and growing children risk having too high of taxable activity and no longer participate in one of the most direct farm-to-table programs in the state.

Reduce complexity and uncertainty to farm and ranch families already under extreme pressure

USDA reports that U.S. farm and ranch net income is down nearly 50% over the last four



years. Most commodity prices are low while the cost of production and regulatory costs both continue to increase. Even the most successful farm and ranch families have years with net operating losses. HB 3427 added to this burden by taxing these families on the money they don't have. Currently, we have local farms take out loans to make payroll and keep their operations afloat this year. It appears to be the legislative intent have families who borrow to pay a tax as it is based on activity, not actual revenue. The time, difficulty, and expense of figuring out which sales are taxable year to year as their activity varies, and which are not taxable and defending those determinations is unbalanced. Rural Oregon is disproportionately impacted by decisions of the legislature. The cost impact on the main economic drivers in these communities will have a negative gross impact on the local schools and taxing districts compared to the small potential revenue contribution.

Incentivize growing, eating, and supporting local Oregon Products

Disincentivizing the sale of local products has enormous negative impacts. A hay producer selling to an Oregon rancher has a reduction in carbon, keeps the money in the state, and would pay the tax. If they sell to an out-of-state customer, they do not pay the tax, truck it further, and export local dollars. This puts Oregon dairy farmers and other livestock producers at a cost disadvantage and compounds inefficiencies in the supply chain. Nursery stock producers are incentivized to sell native plants out of state. This tax discourages local entrepreneurs from investing in local retail sales of their products through farm stands or retail stores and encourages big box stores selling none native plants. A company that produces Douglas fir seedlings for fire recovery and forestry replanting is taxed for selling to Oregon customers. Native plant nurseries serving ODOT, parks, and other public entities within Oregon would be taxed. A native plant nursery selling into Vancouver, WA would not be taxed.

There is no other economic sector where family businesses within the same sector are treated completely differently the way HB 3427 Enrolled treats agriculture. The tax applies or doesn't, based on who is buying the ag product, its destination, and its path to that destination. These are factors largely or completely outside of the farm or ranch family's control. The policy choice has been made over and over to invest in local food, plants, and working families. Policies are in place that recognizes the unique hardships of our farmers and ranchers.

As HB 2164 is being considered as the technical fix package for the new CAT law, our groups ask that Committee adopt the -8 amendments. The amendments provide technical clarity for farmers and ranchers, would reduce conflicting tax policies, and encourage economic prosperity of our rural communities. Oregonians have long been proud of our farm-to-table policies, and when our local farmer's risk is exceeding too much local activity, economic winds will have unintended consequences.

The weight of the new CAT on Oregon farmers and ranchers, coupled with the growing number of tax proposals and other business mandates this session would have dire consequences on Oregon's agriculture community. Even for the farms and ranches who fall below the \$1,000,000 threshold and not subject to the CAT, the goods that are utilized on the farm will increase in price



running up the cost of doing business in this state. These increases and the ambiguities we have identified are of significant concern to Oregon agriculture and can begin to be mitigated with the -8 amendment.