

SMART GROWTH COALITION

June 20, 2019

Chair Nancy Nathanson
House Revenue Committee
900 Court Street NE
Salem, OR 97301

RE: Support for SB 851-A

Dear Chair Nathanson and Members of the Committee,

Thank you for the opportunity to submit these written comments on behalf of the Smart Growth Coalition regarding our support for SB 851-A.

About the Smart Growth Coalition

The Smart Growth Coalition is a consortium of traded sector businesses with significant operations in Oregon. Our coalition was formed in 1999 to add technical expertise to state legislative proceedings regarding proposed reforms to state tax law affecting businesses who have made investments in jobs and capital projects in the state. Our members are unified in their commitment to sound tax policies that encourage local investment in Oregon and provide technical simplicity and clarity to the state tax code.

Tax Cuts & Jobs Act: New rules for foreign income

SB 851-A addresses complications that have risen in the interaction of existing state law and the 2017 federal tax law. The Tax Cuts & Jobs Act transitioned the U.S. from a worldwide to a territorial tax system and created new guardrails intended to prevent tax planning in low-tax jurisdictions. This guardrail, known as global intangible low-taxed income (GILTI), essentially requires taxpayers to include supernormal foreign income in their federal taxable income if it exceeds a certain rate of return.

For federal tax purposes, taxpayers are provided a 50 percent deduction in IRC §250 and credits to offset payments to foreign governments, limited to 80 percent of GILTI. State income tax laws, however, do not provide any foreign tax credits because their tax bases are generally limited to the water's edge (income earned within the U.S.). This

creates a disconnect between state and federal policy and may result in income from high- and low-tax jurisdictions from being included in the state tax base.

Oregon automatically conforms to this area of federal tax law by virtue of the rolling connection to federal taxable income, but current state law does not prescribe a method for including this income in the state tax base. This creates a lack of policy direction for the Department of Revenue and uncertainty for taxpayers, leaving much open to the interpretation of accountants and tax lawyers. These factors create a substantial risk of tax litigation that could put state revenues in jeopardy.

SB 851-A: A simple solution to a highly complex policy

SB 851-A is the byproduct of months of work between the Department of Revenue, taxpayers and committee staff to find an appropriate conformity response. The policy direction relies on the Oregon Dividends Received Deduction (DRD) as the mechanism to include this new income in the state tax base. The legislature has long used this tool as the method for including other forms of foreign income, such as Subpart F income and the repatriation tax event in 2017, in the state tax base. In addition to addressing GILTI conformity, the bill addresses technical irregularities to conform to the new federal tax regime.

We believe SB 851-A is an appropriate response to the new federal tax law. It alleviates much of the uncertainty surrounding this policy by providing a clear and concise method for including this income in the state tax base. Ultimately, our members recognize they may pay more in taxes to Oregon as a result of this legislation, but the method outlined in the bill is fair and provides certainty for business. We offer our support to achieve it.

Thank you for allowing us to submit these comments in support of SB 851-A.

Sincerely,

Jeff Newgard
Executive Director