



MOTION PICTURE ASSOCIATION - AMERICA

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The Honorable Mark Hass
Chair, Senate Finance and Revenue Committee
State Capitol
Salem, Oregon

RE: Senate Bill 1529

Dear Senator Hass,

We would like to provide some additional information and answer issues and questions that were raised at Tuesday's hearing before the Committee.

The Department of Revenue (DOR) promoted the use of audience apportionment because it is included as guidance for states by the Multistate Tax Commission (MTC). Eleven of MTC member states, which have adopted the commercial domicile apportionment for broadcasters, rejected the MTC's audience apportionment in favor of the more contemporary method proposed by the MPA. Please see the enclosed chart.

There was some discussion that the commercial domicile of an Oregon company that may be represented by a New York or California advertising agency is disregarded. An Oregon domiciled company would not be deemed to be a New York or California domiciled company because that Oregon company used a New York or California¹ ad agency. Commercial domicile is based on the domicile of the actual advertiser, not the advertising agency. Since 2014, the

¹ MPA acknowledges that California and New York utilize audience apportionment. However, the circumstances are unique to those states. Audience was instituted in California and New York at a time when the general rule in California was cost of performance (COP) and the general rule in New York was proportionate COP. Under the general rule, a broadcaster could have 100% of its broadcasting revenue sourced to California and anywhere from 40% to 60% sourced to New York. To mitigate this punitive result and to incentivize the broadcasters to retain significant presence in the respective states, the audience method was adopted.

national broadcast networks and cable program networks have been taxpayers in Oregon. Our estimates indicate that the broadcast companies commonly owned with the MPA member companies pay almost \$7 million annually in tax to Oregon.

The discussion regarding “nowhere income,” meaning that income earned by broadcasters will not be taxed in any state, needs some clarification. There is no uniformity among the states as to how to source broadcasting revenue. Some states use a Cost of Performance methodology, some states use a customer domicile as a market sourcing methodology and some states use an audience methodology. Consequently, the result is that a broadcaster’s revenue from an advertiser or licensee may be over-included (double taxed by more than one state) or under-included in the various states dependent upon the location of its customers and the applicable law in each jurisdiction. The lack of uniformity among the states is what causes the over- or under-inclusion in the numerator of a broadcaster. It is not the methodology.

At Tuesday’s hearing, application of the audience method was discussed in a hypothetical situation, i.e., Netflix, which derives its revenue from subscribers. Netflix is similar to the streaming services that have been developed (and are being developed) by MPA members (CBS All Access, Disney +, Hulu, and later this year, HBO Max and Peacock) and other companies (Amazon Prime, Apple TV+). Receipts from subscriber fees would be sourced to Oregon based on the billing address of the customer, under both audience apportionment and commercial domicile.

The difference between audience apportionment and commercial domicile apportionment can be illustrated by looking at a national broadcast network or a national cable program network. Under audience, the taxpayer would use ratings systems to determine the share of its audience attributable to Oregon. Each network might have a different audience. You might imagine that the audience for Comedy Central would be different from Bravo, which would be different from HBO, etc. And there would be differences between ABC, CBS, NBC and Fox. DOR has challenged the taxpayers’ efforts to establish their individual audience and this is what has led to the controversies. Under commercial domicile, the broadcaster looks at its receipts from advertising customers and licensing customers, as well as individual customers with Oregon addresses. That amount is included in the numerator of the sales factor and the denominator is gross receipts from its business in the U.S.

There was discussion about the term “gross receipts” and its inclusion in SB 1529. The definition “gross receipts from broadcasting” was deleted by legislative counsel, most likely, because that term is not used in any other provisions. However, “gross receipts” is retained as part of the denominator [Section 2 of the bill, ORS 314.684 (2)] and it is retained in the election by a platform broadcasting company [Section 2 of the bill, ORS 314.684 (4)].

And finally, the issue was raised as to how the formula provided in the -2 amendment (multiplying .4% by the broadcaster’s domestic receipts from advertising and licensing plus receipts from individuals who are Oregon residents) came about. MPA’s effort here is to find a compromise that will provide a fair and equitable tax system for broadcasters and for the state.

Our estimate is that Oregon will realize an additional \$2 million in annual revenue from the broadcast companies that are commonly owned with MPA's member companies.

Thank you for your consideration. We look forward to the next hearing on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Melissa Patack". The signature is written in a cursive, flowing style.

Melissa Patack

cc: Members, Senate Finance and Revenue Committee
Chris Allanch
Kaitlyn Harger

MTC Member States

Apportionment for Broadcasters Based on Commercial Domicile/Customer Location

Compact members

Texas

Sovereign members

Kentucky

Louisiana

Michigan

Rhode Island

Associate members

Florida

Illinois

Iowa

North Carolina

Tennessee

Wisconsin

<http://www.mtc.gov/The-Commission/Member-States>