

# SMART GROWTH COALITION

February 11, 2020

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

## **RE: Support for the -13 Amendment to HB 4009 (Modified Group Election)**

Chair Nathanson and Members of the Committee,

Thank you for the opportunity to submit these comments on behalf of the Smart Growth Coalition. We are grateful for the efforts of the Oregon Department of Revenue and committee staff to resolve this technical issue to the Corporate Activity Tax. We urge the adoption of the -13 amendment.

### **About the Smart Growth Coalition**

Our coalition was formed in 1999 to add technical expertise to state legislative proceedings regarding proposed reforms to state tax laws 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 investment in Oregon and provide technical simplicity and clarity to the state tax code.

### **Need for a Modified Group Election**

There have been issues identified in the interaction between the definition of a unitary group (group of entities treated as a single taxpayer) and the statutory subtraction for taxpayers with entities outside the United States. Since ORS 317A.106 contains no language limiting the reach of the unitary group to entities with a connection to Oregon and the United States, the plain language of the statute appears to require worldwide combined filing on a mandatory basis. **This means entities without any connection to Oregon or the United States would be required to maintain books and records for the tax, despite not being subject to it.** This issue would be less concerning in a traditional gross receipts tax—a taxpayer would only need to account for the tax if they had taxable sales into the state—but the apportionment of the statutory subtraction creates substantial layers of complexity.

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Consider, as an example, a taxpayer with an entity incorporated in Oregon and related entities incorporated and operating outside the United States. If the Oregon entity is the only unitary member with commercial activity sourced to Oregon, the other members of the unitary group would still be required to maintain a record of their commercial activity (as defined by Oregon) in their local jurisdiction to calculate the group's statutory subtraction. This is complicated further by the possibility those foreign entities may not be required to file a federal income tax return because of their structure. In that case, the foreign entity would be required to maintain books and records for the federal income tax, despite not being subject to it, for the sole purpose of accounting for a state tax it does not owe.

### **-13 Amendment Eases Tax Administration and Compliance While Maintaining Policy Intent**

The -13 amendment is the byproduct of meetings between the Oregon Department of Revenue and taxpayers to address the administrative and compliance concerns of a worldwide unitary group. The amendment allows an election for the filing group to remove foreign entities without a connection to Oregon. If a foreign entity does not have any activity connected to Oregon, the law will allow an election for the group to remove the entity from the accounting requirements of the tax. If an entity does have activity connected to Oregon, the entity will remain in the unitary group. The election does not change the starting point for the tax (commercial activity sourced to Oregon) and **maintains the state's ability to try to collect tax from foreign entities selling into Oregon** while simplifying the process for computing and auditing the amount of tax to be paid.

We want to thank the committee staff, department, and other stakeholders involved in the process of addressing this technical issue. We encourage the committee to adopt the -13 amendment.

Sincerely,

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

Jeff Newgard