SB 1529 -8 STAFF MEASURE SUMMARY

Senate Committee On Finance and Revenue

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Meeting Dates: 2/4, 2/11, 2/13, 2/18, 2/20

WHAT THE MEASURE DOES:
Repeals statutes related to interstate broadcasters and removes from statute references that become obsolete upon repeal. Takes effect on the 91st day following adjournment sine die.

ISSUES DISCUSSED:
- Changes to broadcaster apportionment over time in Oregon
- Market based sourcing
- Nexus
- Options for apportioning broadcaster income

EFFECT OF AMENDMENT:
-8

Replaces the bill. Creates a standalone provision detailing how the numerator of the sales factor should be calculated for broadcasting sales. Directs taxpayers to use third party ratings or information from their books and records to determine the numerator of the sales factor. In cases where aforementioned information is not available the Department of Revenue may use the ratio of Oregon population to United States population as the sales factor. In the case of licensing to subscription services or advertising on subscription services the numerator of the sales factor is equal to 0.6% multiplied by the taxpayer's receipts from licensing to subscription services and advertising on subscription services. Adds to statute a modified definition of broadcasting. Provides all taxpayers with an option to elect to apply their apportionment ratio to their total gross receipts, not just broadcasting sales. Repeals statutes specifically related to interstate broadcasters and removes from statute references that become obsolete upon repeal. Applies to tax years beginning on or after January 1, 2020. Takes effect on the 91st day following adjournment sine die.

BACKGROUND:
In 2014, due to the passing of HB 4138, Oregon changed its method of corporate income apportionment for interstate broadcasters. The legislation changed Oregon from an apportionment method based on the share of viewers in Oregon, called audience factor apportionment, to a method based on the state of domicile of customers of interstate broadcasters, called domicile factor apportionment. This temporary legislation was in place until 2016, after which the Legislative Revenue Office (LRO) was tasked with analyzing the policy.

The LRO report in 2017 was inconclusive due to three main areas of uncertainty, which remain largely uncertain today. First, disagreement exists over which companies are interstate broadcasters and thus should be apportioning as such. Second, there is uncertainty over the business activities that imply nexus for an interstate broadcaster in Oregon. Third, disagreement exists over whether all or part of an interstate broadcaster's income is subject to interstate broadcaster apportionment methods. The temporary apportionment provision was again extended for tax years 2017 and 2018 as part of SB 1523 during the 2018 legislative session. Ongoing litigation still exists in Oregon's court system regarding the three issues raised above.

In 2019, SB 193 temporarily extended the domicile factor method of apportionment for tax year 2019 and required the Legislative Revenue Officer, in consultation with the Department of Revenue, to study broadcaster apportionment methods. The bill required the LRO to submit a report detailing the results of this study. The report had four key findings. First, LRO raised concerns about the breadth of the definition of broadcasting in Oregon statute. The report also highlighted the dynamic nature of the industry and its ongoing changes with an expectation of continued changes within the near future. Third, LRO described how key assumptions related to nexus affect the revenue impact estimates both in magnitude and direction. Finally, LRO suggested greater statutory direction on apportionment factor calculations for this industry.

The introduced version of the bill repeals the statutes related specifically to interstate broadcasters. The implicit effect of this is that broadcasters will be subject to Oregon's general method of apportionment for intangible property, market-based sourcing.