

SMART GROWTH COALITION

February 10, 2021

Chair Ginny Burdick
Vice-Chair Brian Boquist
Senate Committee on Finance & Revenue
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Sent electronically

RE: Opposition to S.B. 312 (Corporate Tax Disclosure)

Dear Chair Burdick, Vice-Chair Boquist, and Members of the Committee,

Thank you for the opportunity to submit these comments on behalf of the Smart Growth Coalition in opposition to S.B. 312. This legislation would require the Oregon Department of Revenue and the Legislative Revenue Officer to issue a public report disclosing confidential tax return information of multistate corporations. We are concerned this legislation violates fundamental taxpayer privacy rights and constitutional protections against tax discrimination. Moreover, we believe that violating taxpayer confidentiality under the auspices of “transparency” does not serve a legitimate policy purpose or promote thoughtful and informed policy, and instead only weaponizes the tax code.

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 investment in Oregon and provide technical simplicity and clarity to the state tax code.

Lawmakers Already Have Access to Tax Information to Inform Policymaking

The Oregon Department of Revenue and Legislative Revenue Office regularly provide real-world, anonymized taxpayer information to aid the committees in evaluating the efficacy and effectiveness of state tax policy. This information plays a critical role in informing our debates around new and existing tax policies while maintaining the fundamental taxpayer

right to privacy. As committee members, you can request information on specific classes of taxpayers, such as corporate form, gross receipts, and tax liability, to assess the merits of a tax policy. This information provides policymakers and the public with a more comprehensive understanding of the impact of specific changes to our tax structure. Conversely, the public disclosure of tax return information provides an incomplete and misleading portrayal of the tax system.

The assertion by proponents that the public disclosure of tax return information helps inform tax policy debates by allowing the public to determine if an individual taxpayer has paid its “fair share” is misguided and does not promote thoughtful policy. Showing an individual taxpayer’s specific income tax situation for a given year does not illustrate the effectiveness or efficacy of the overall tax structure. If a taxpayer experiences substantial losses due to increased investment and claims those losses against their current year taxes, the disclosure report would only show the taxpayer paid little or no taxes. The information currently available to the legislature provides significantly more value to our policy debates without the risk of drawing misinformed conclusions from complex tax situations.

Public Tax Disclosure Risks Legal and Constitutional Infirmities

The tax disclosure report proposed in S.B. 312 exclusively targets multistate taxpayers with tax expenditures above an unspecified amount. The targeted nature of the proposal raises serious concerns regarding potential violations of constitutional and federal law. In particular, the narrow application of multistate taxpayers seems to directly and intentionally discriminate against interstate commerce. Additionally, the tax expenditures necessary to trigger the reporting requirements may amount to an unconstitutional tax classification under both the U.S. equal protection and Oregon uniformity clauses. If the courts find these disclosure reports violate constitutional protections against discriminatory taxes, the courts may eliminate the discriminatory features and apply the reporting requirements broadly to all taxpayers or simply eliminate the report altogether.

The report may also violate IRC § 6103, which prohibits any employee or officer of a state from disclosing information from or about a taxpayer’s federal tax return. Although the reportable items outlined in the legislation appear to include only information from the state tax return, the disclosure of tax expenditures may amount to the release of information from the federal return. Since Oregon has eliminated many corporate tax credits and other income tax incentives, the amount reported for tax expenditures may only comprise expenditures provided through the state’s connection to federal tax law. If so, S.B. 312 may result in the inadvertent disclosure of federal tax information that violates § 6103 and

jeopardizes Oregon's access to federal tax information critical to administering the personal and corporate income taxes.

In 2020, California's legislature approved a measure requiring a similar disclosure report, but Governor Newsom vetoed the legislation in part because he understood the disclosure went too far and risked the state's access to federal tax information. In his veto message to the legislature, Governor Newsom said that public tax disclosure was "unnecessary" and that he was "not persuaded that enactment of [the] bill would provide additional value to future policy deliberations."

S.B. 312 Puts Our Home-Grown Businesses at a Competitive Disadvantage

The disclosure of confidential tax information would make Oregon an outlier among the states and create a significant hardship for Oregon corporations competing against businesses in other states and countries without these requirements. Competitors could glean trade secrets from Oregon corporations, such as investment decisions, and use that information to gain a competitive advantage. The disclosure requirements would effectively alienate our home-grown businesses creating jobs and capital projects at a time when their investment and reinvestment is crucial to our economic recovery.

For these reasons, the Smart Growth Coalition respectfully asks the committee not to pursue S.B. 312 and similar proposals requiring the public disclosure of confidential tax information. If there are concerns about our tax system's effectiveness or fairness, we implore you to work with your professional staff to secure the information necessary to inform our debates without alienating individual businesses and harming Oregon's business climate and economy.

Sincerely,

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

Jeff Newgard
Smart Growth Coalition