Oregon Society of Certified Public Accountants

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2021 Oregon Legislative Assembly
House Committee on Revenue
Testimony related to HB 2839 – Opposition

Date: February 10, 2021

Good afternoon, Chair Representative Nathanson, Vice-Chair Representative Pham, Vice-Chair Representative Reschke and Members of the House Committee on Revenue.

On behalf of over 4,100 members of the OSCPA, we respectfully submit testimony in **opposition to HB 2839** related to business interest expense and business losses (section 2 through 7).

Background:
The proposed disconnect in Oregon's conformity to federal will cause challenges for many individual and business taxpayers alike. The disconnect could negatively impact Oregon "main street" businesses, thus individuals as well, many already under strain due to COVID-19. Additionally, there is also potential for negative impact on the Oregon Department of Revenue which includes risk of taxpayer nonconformity due to complexity. Taxpayers have already filed Oregon returns using current Federal law. The proposed disconnect would require taxpayers to file amended tax returns and repay refunds which they have already received.

Why is opposition to HB 2839 appropriate?	HB 2839 introduces multiple provisions into Oregon law which deviate from federal tax law. These changes will add complexity to Oregon law affecting taxpayers as well as the Department of Revenue.
	The overarching issue and concern related to HB 2839 is not limited to the specific subject matter – the excess business loss deduction, the net operating loss deduction, and the business interest deduction limitation.
	Instead, from a more important perspective, HB 2839 advances the idea that Oregon disconnecting from federal tax statute and provisions is a simple course of action with few consequences. Disconnecting from federal statute and provisions increases state tax complexity, a significant consequence.
	HB 2839 can be misinterpreted. Some may consider that this federal provision only impacts a small number of wealthy Oregonians. Instead, it could have a significant impact on the financial health of many, many Oregon businesses, thus it could also impact their employees. Those taxpayers are employed in many different businesses and cross many income levels. That additional burden is over and above the financial troubles to which those businesses are already subject.
	Struggling taxpayers who have received refunds from net operating loss carrybacks would be required to file amended returns and repay the refunds. In

	many cases, these funds have been used to sustain their businesses and a requirement to repay them would cause financial hardship.
	Additional legislative time and resources would be required to establish and maintain Oregon's separate tax code with regard to disconnected provisions.
	With regard to the net operating loss provision, the HB 2839 does not provide for carryforward of the disallowed net operating loss carryback. We do not believe the intent is to permanently disallow the deduction of these losses for struggling business owners. This drafting issue illustrates the need for considered and thorough analysis when choosing to depart from federal tax code, to avoid unintended consequences like this. This also illustrates the difficulty of Oregon establishing and maintaining its own tax code with regard to specific disconnected provisions.
What is the negative effect of not conforming?	**We oppose disconnecting as some of these consequences include:** • It is recognized that Oregon is in a challenging economic environment based on the impact of the pandemic. At first glance, it could be assumed that this section of the federal Acts primarily benefits the wealthy. That is a false assumption. Oregon's business community consists of many small "main street" businesses and is not significantly represented by numerous multi-national businesses. Businesses of all sizes, especially small, have been impacted by COVID-19. • Disconnecting from federal statute and provisions increases our state tax complexity with significant consequences. Complexity negatively impacts Oregon and out-of-state taxpayers, both individuals and businesses, as well as tax advisors, as it increases the risk of misinformation and thus non-compliance. This increases the risk of noncompliance for taxpayers who may complete their own individual or business tax returns. • Complexity can also have potential negative impact for the Oregon Department of Revenue (DOR) on their processing. The more difficult the understanding of the differences between state and federal statutes and provisions, the higher the risk of noncompliance by taxpayers. • Many initial and amended returns have already been filed, or are soon to be filed, to incorporate the federal changes. If Oregon were to disconnect in this area, it would require completion of yet another round of amended returns for many, many taxpayers. This sets the stage for conflicting filed returns. For DOR, this could also increase the number of inquiries from the public as well as tax advisors. • Supporting conformity, and not disconnecting from various federal statutes and provisions, is in the best interest of Oregon taxpayers, both for businesses and individuals. This helps taxpayers to understand that the decisions they make for federal purposes also impact their Oregon tax obligation and compliance.
Why is conformity the preferred method of tax policy?	**Conformity between federal tax law and Oregon statutes reduces tax complexity for a variety of stakeholders.** • Complexity negatively impacts Oregon taxpayers as well as tax advisors. • Without conformity, Oregon must write and maintain its own tax code – a significant and complex undertaking. Additionally, this also means that taxpayers, both individuals and businesses alike, are required to follow two different sets of complex tax code – one at the national level and one at the state level. • Complex tax law raises costs for taxpayers as tax advisors must spend more time on returns. Instead, many tax advisors would prefer to advise

	their clients on the important aspects of running and strengthening their businesses. This is particularly the case for small businesses that may have much need for support, versus the tax advisor and taxpayer needing to focus on overly complicated tax code.
	• Complexity also has the potential to negatively impact the Oregon Department of Revenue (DOR). The more complex the process of understanding the differences between state and federal statutes and provisions, the higher the risk of unintended noncompliance by taxpayers.
	• In the case of HB 2839, many taxpayers have already filed their 2018 and 2019 tax returns, plus many have or will soon file 2020 tax returns. That raises questions such as:
	   o Will those filings have to be returned to taxpayers from the DOR for correction and refiling, or will amended returns be required?
	   o Since the House Bill does not become law until 91 days after the end of the 2021 legislative session, these revised rules would not be incorporated into Oregon tax law for months. What will taxpayers do in the interim?
	   o Will DOR be able to easily deal with the potential backlog?
	• It should be noted that the compliance challenges that will be faced by Oregon Department of Revenue will be significant. Components in tax code are interconnected, so changes in rules affect or impact other areas which must be considered and possibly rewritten.

Recommendation:

Supporting conformity, and not disconnecting from various federal statutes and provisions, is in the best interest of Oregon taxpayers and the Department of Revenue. This helps taxpayers to understand that the decisions made for federal purposes also impact their Oregon tax obligation and compliance.

On behalf of Oregon Society of CPAs, we respectfully encourage you to oppose HB 2839 and remain connected to federal tax code and provisions. Thank you for the opportunity to share our concerns.

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