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June 21, 2021

To: The House Committee on Revenue
From: Anthony K. Smith, National Federation of Independent Business
Re: NFIB Testimony in Opposition to SB 139 A

Chair Nathanson, Vice-Chairs Pham and Reschke, and Members of the Committee:

On behalf of the thousands of Oregon small business members of the National Federation of Independent Business, many being the smallest of small businesses, I would like to share with you our concerns with SB 139 A, which would significantly restrict eligibility for Oregon's pass-through entity (PTE) tax rate policy while at the same time unnecessarily raising revenue.

Unlike other approaches, which could reform the policy to achieve certain revenue-neutral policy goals, SB 139 simply raises revenue without a specific policy objective to justify the tax increase and provides no tax benefit for small businesses with the most modest levels of income.

By way of background, the small business PTE tax rates were part of the Grand Bargain from the 2013 special session. The package of bills passed during the special session included HB 3601, which among other provisions that raised revenue overall, created new tax rates for taxpayers with PTE business income meeting certain criteria, namely those with at least one full-time employee and those whose owners actively participate in the day-to-day operation of their businesses. The policy objective was to provide a more favorable rate structure for these businesses.

As a reminder, Oregon has already disconnected from federal PTE tax policy. The Tax Cuts and Jobs Act (TCJA) of 2017 used a tax parity lens to make sure that both C corps and PTEs benefited as equally as possible from the tax cuts. C corps saw their corporate income tax rates reduced from 35% to 21% and pass-through businesses were able to apply a new 20% deduction on their qualifying business income (Sec. 199A) to reduce their federal tax liability. During the 2018 regular session, the Legislature passed SB 1528, which required an add-back of that federal deduction as Oregon taxable income primarily because the state already had its own PTE tax policy. The Governor then called a special session to pass HB 4301, which expanded Oregon's PTE rates to sole proprietorships (and single-owner

LLC's), a group of businesses that were left out of the original legislation. The net result was that while Oregon's PTE policy now benefits around 25,000 businesses, hundreds of thousands of businesses missed out on the tax savings they would have received on their Oregon income taxes had the state remained connected to the federal 20% pass-through deduction.

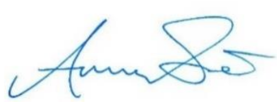
While SB 139 A broadens the lowest PTE rate (7%) to income up to $500,000 and provides a slight rate decrease (from 7.6% to 7.5%) for income between $500,000 and $1 million, Oregon's smallest businesses with less than $250,000 in ordinary business income will see no benefit from the proposed changes in this policy and businesses with more than $5 million in income would be prohibited from opting into the program, retroactively starting January 1, 2021. Additionally, a new requirement would be applied to S corps and partnerships with ordinary business income exceeding $250,000. Businesses subject to this requirement would need to meet or exceed a new "employee to owner ratio", adjusted based on income, and/or reinvest at least 75% of business profits back into the business, making it harder to qualify for the program.

From a tax expenditure perspective in terms of dollars, this tax policy has performed exactly as it was intended. In the five tax years that the PTE rate structure has been in place, the revenue impact to the state has come in at or under projections each year. The number of taxpayers utilizing the rate structure has been relatively stable year-over-year and the side boards that were part of the original legislation passed in the 2013 Special Session have not been triggered.

Finally, the May Revenue Forecast was incredibly strong, projecting a $2.8 billion positive ending balance. This amounts to a $1.1 billion increase from the March Revenue Forecast and a $2.3 billion increase from the 2019 Close of Session Forecast. The state has also been allocated $2.6 billion in direct financial aid from the Biden Administration's American Rescue Plan Act, not counting the additional federal ARPA funds going to local jurisdictions. Given this, there is no budgetary justification for tax increases of any sort, including tax increases on pass-through businesses.

NFIB respectfully asks the committee to oppose SB 139 A.

Thank you for your time and consideration,



Anthony K. Smith
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