



## **SB 137 -1 amendment: Supporting the CARES Act disconnect**

Testimony for Senate Committee on Finance and Revenue – Bennett Minton – 2.22.2021

Madam Chair and members of the Committee:

Tax Fairness Oregon is a network of volunteers who advocate for a rational and equitable tax code. We strongly support the -1 amendment to SB 137.

We became alarmed about these three CARES Act provisions last spring, when their harm to the General Fund and their distributional effects came into focus. Days after CARES became law, members of Congress alerted their colleagues about these buried provisions. The Joint Committee on Taxation [produced a distributional analysis](#) of the suspension of the of the business loss limitation provision: 82% of the benefits will go to individuals reporting 2020 income greater than \$1 million; those 43,000 taxpayers will receive an average benefit of \$1.6 million.

As you know, LRO has reduced its estimate of the cost of these three provisions since May, thanks to Oregon's sunnier revenue outlook. But our concerns remain: The provisions are a misallocation of limited resources created in Washington, not Salem, and they threaten the General Fund.

I spent three decades in D.C. as a reporter and policy analyst, mostly in tax, and many hours in the Senate Finance Committee, where committee leaders struck deals like this one. The business-lobby witnesses in Oregon's Senate Finance Committee last week contended that the CARES Act was bipartisan. But as you know, legislation comes from compromise, and unlike Oregon, the federal government doesn't balance its budget. Ranking Democrat Wyden championed greater unemployment benefits. In exchange, Republicans insisted on the suspension, for 2018 through 2020, of these limits imposed on business-tax cuts enacted in 2017. My brief summary:

- In 2017, Congress eliminated the net operating loss carryback and extended the carryforward indefinitely. (That is, the periods went from 2/20 years to  $\emptyset/\infty$ .) As LRO notes, CARES temporarily extended the carryback five years, allowing taxpayers to use NOLs from these years to offset taxable income as far back as 2013. In academic circles, it's just a shift in when businesses pay tax. But in the real world, some of that revenue leaks—the business never pays because circumstances change or Congress amends the law, as it did here.
- The 2017 business loss limitation—the subject of the JCT analysis—applied to pass-throughs. Its purpose is to stop taxpayers from using business losses to offset **amounts greater than a half-million dollars** in non-business income and end up with no tax liability. For example, if in 2018 my spouse and I had non-business income of \$2 million and our businesses lost \$2 million, we could use only \$500,000 of the business loss to offset the non-business income. As a result, we

***We read the bills and follow the money***

would still pay tax on \$1.5 million. The rest of the loss would carry forward as an NOL. Under the CARES suspension, we can amend our return and get a refund. Ours is an exclusive club: 43,000 taxpayers among 143 million.

- Third is the interest expense limitation, a provision I lobbied against during the Obama administration. Section 163(j) is intended to prevent companies from using interest deductions to make money elsewhere, a practice known as “earnings stripping.” Years ago, Congress addressed earnings stripping in part by disallowing certain corporate interest expenses that exceeded 50% of the corporation’s “adjusted taxable income,” a complicated formula. In 2017, Congress applied that limitation to all taxpayers—with exceptions—and lowered the limit to 30%. Interest expense not allowed as a deduction may be carried forward. It’s a timing shift.

What are the exceptions? In the 2017 law, the expansion of 163(j) did not apply to businesses with gross receipts of less than \$25 million. Nor did it apply to dealers of motor vehicles, boats or farm machinery. It also left out, at the taxpayer’s election, two other sectors: real estate and farming. Why these exceptions? Congress was carving out industries for which leverage transactions are essential, leaving in those using debt to make money.

Why did Congress suspend these provisions? Officially, to enhance “liquidity” during a sharp contraction. This makes little sense, because tax benefits—especially these—have little or no immediate effect. A taxpayer who filed an amended return for 2018 or 2019 would wait weeks or months for refund. (Recent reports are that the IRS is still processing 2019 returns, and amended returns are a lower priority.) For 2020, the taxpayer may have counted on a tax reduction over the course of the year, assuming the taxpayer projected any liability. But for most businesses losing money in the COVID contraction and therefore without liability, NOLs don’t result in cash. A beneficiary of these provisions is by definition not a “struggling business.” And for most, the “liquidity” of a tax refund isn’t worth their accountants’ time to amend.

My explanation for these provisions is born of experience: The lobbyists who won massive business tax cuts in 2017 remained at the doors of the Finance Committee, looking to be relieved of these limits. (For example, JCT estimated that the 2017 tax cut for pass-throughs would cost \$415 billion and the corresponding pass-through limit, suspended by CARES, would raise \$150 billion.) Like other lawmakers, Finance Committee members like giving away money, but their method is the abstract tax code. Those who pay a lot of tax hire lobbyists (like I was) to hang around their doors.

About half of states with an income tax share Oregon’s rolling conformity to the federal code. Of those with rolling conformity, five—New York, North Carolina, Georgia, Colorado and Hawaii—have disconnected from CARES Act provisions. Virginia is about to become the sixth. New York’s disconnection applies through 2021, to protect its tax base from similar moves, like the PPP double-dip, which we urge the committee to examine.

In sum, these provisions are useless for struggling businesses in Oregon. Since Congress acted last March, we have witnessed a recovery that has shifted income upwards but left millions of Americans, and many thousands of Oregonians, hanging by a thread. One out of seven of our fellow citizens is hungry right now. Remaining connected in the face of urgent needs strikes Tax Fairness Oregon as irresponsible.

## Hearing Record House Revenue Committee LC2 Testimony – August 6, 2020

When Chair Nathanson introduced LC2, a proposal to disconnect Oregon from three provisions of the federal CARES Act, Oregon Business and Industry created a web site, “Brighter Oregon,” and urged its members to write the committee. Many did so, some adding a sentence or two to the paragraphs OBI had composed for a form letter.

Not one of the more than 200 letters – which became part of the committee’s informational hearing record of August 6, 2020 – addresses how LC2 might affect the submitter’s business. We are unaware of a single opponent’s testimony, including those of lobby groups, that addresses the effects of disconnecting. (The Oregon Society of Certified Public Accountants accurately noted that disconnection will add complexity to some taxpayers’ returns.)

To date, no opponent of disconnection has submitted a substantive argument addressing which businesses benefit from CARES. (The Oregon Auto Dealers Association wrote that its concern was the treatment of “floor plan interest,” but Congress had exempted vehicle dealers from the business interest limitation in 2017, so they were unaffected by the CARES Act.)

Twenty-four broad-based organizations (and one business) endorsed LC2:

1. Ecumenical Ministries of Oregon
2. Human Services Coalition of Oregon
3. League of Women Voters
4. Oregon Center for Public Policy
5. Oregon Education Association
6. Oregon Food Bank
7. Tax Fairness Oregon
8. Fight for the Future coalition (which includes five organizations noted above):
  9. AFT
  10. AFSCME Council 75
  11. Coalition of Communities of Color
  12. Fair Shot for All
  13. Forward Together Action
  14. Hacienda
  15. Human Services Coalition of Oregon
  16. Latino Network
  17. NARAL
  18. Oregon Health Leadership Council
  19. Oregon PTA
  20. Oregon Student Association
  21. OSEA AFT Local 6732
  22. Our Oregon
  23. Partners for a Hunger-Free Oregon
  24. Renew Oregon
  25. SEIU

*The Oregonian* reported on the “Brighter Oregon” [“copycat” letter campaign](#) August 20, 2020. Brighter Oregon submitted 127 identical letters on behalf of individuals who, evidently, clicked through a website form. The text:

*Dear Leaders:*

*Like many businesses, my biggest issue right now is liquidity, and disconnecting from the CARES Act harms businesses like mine who are just trying to make ends meet by taking money when I need it most. You are taking away one of the few tools we have to try and stay afloat.*

*If Oregon disconnects from the CARES Act, not only are you are harming thousands of local businesses, you are harming the integrity of the federal bipartisan legislation. In the middle of a pandemic, and the worst downturn since the Great Depression, we must prioritize consensus solutions and stop this partisan move by the Legislature. My ability to recover from this pandemic depends on your support, and LC 2 will only make it harder to come back from this crisis.*

Another 79 writers submitted their own statements, virtually all containing four identical paragraphs, many adding a line or a paragraph of their own to emphasize their displeasure.

Two individuals wrote their own letters, taking no suggested text but adopting the substance of the Brighter Oregon rhetoric. A third criticized tax increases but added: "If taxes need to be applied, then do not apply them to small and local businesses." Another five represented business lobbies.