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February 15, 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: Comments on the -1 Amendment to S.B. 312 (Corporate Tax Disclosure)**

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

Thank you for extending the public comment period to provide us an opportunity to review and provide additional testimony on the -1 amendment to S.B. 312. We believe the proposed amendment only worsens the practical, legal, and economic pitfalls raised in our comments on the introduced measure.<sup>1</sup> The amendment only furthers the misguided assertion that publicly disclosing company-level tax information enhances the legislature's ability to evaluate tax policy and increases the likelihood of running afoul of taxpayer protections under constitutional and federal law. We vehemently oppose the amendment and respectfully urge you not to pursue these proposals.

**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.

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<sup>1</sup> See Smart Growth Coalition, "Opposition to S.B. 312 (Corporate Tax Disclosure)," February 10, 2021, <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/2916>,

**Setting the Record Straight: Corporate Tax Collections are Historically High**

Several proponents testified that S.B. 312 was necessary because the taxes paid by corporations are historically low due to “loopholes” in the tax code. These statements are emphatically untrue and easy to disprove. During the most recent revenue forecast on November 18, 2020, the state economists discussed and dedicated a slide to the steep increase in corporate tax payments over the last 15 years. The economists contributed the increase to the legislature’s adoption of the single sales factor, market-based sourcing, and federal conformity to the Tax Cuts & Jobs Act (TCJA) of 2017. In the graph below, provided by the Office of Economic Analysis in their revenue forecast presentation, the economists illustrate corporate tax collections growing by more than 400 percent since these reforms.



The advocates also made misleading claims about multinational taxation without referencing any legislative history. As part of the TCJA, Congress reformed international tax planning incentives by creating a new global minimum tax, called global intangible low-taxed income (GILTI). Our coalition engaged and ultimately supported the legislature’s conformity to this new tax in S.B. 851 (2019) to address these claims about international tax planning. Nevertheless, the advocates for this measure continue to raise them without acknowledging the legislature and our coalition’s efforts.

It is also worth noting the income tax is only one of many tax contributions paid by corporations. Along with the income tax, corporations pay payroll, property, gross receipts, and many other specialty excise taxes to support public services. The tax landscape has also fundamentally changed since previous iterations of these disclosure proposals due to the enactment of the corporate activity tax. The advocates intently avoid any reference to these other taxes or any evidence to support their claims of Oregon tax provisions serving as “loopholes.” Thus, it seems these claims are nothing but political fodder trying to elicit an

emotional response to justify their continued smear and fundraising campaigns against corporations.

### **Description of the -1 Amendment to S.B. 312**

The proposed amendment to S.B. 312 replaces the bill's introduced language with a requirement for the Secretary of State to publish a report detailing the tax return information of publicly traded, multistate c-corporations doing business in Oregon claiming any tax expenditures. The report would include the taxpayer's name and address, subsidiaries, number of employees and wages paid, and tax expenditures listed individually, among many other data points from the federal and state tax returns.

### **Infirmities Under Constitutional and Federal Law**

In our earlier comments to the committee, we raised concerns that the introduced bill may run afoul of taxpayer protections guaranteed by the U.S. and Oregon constitutions as well as federal law. The -1 amendment only amplifies these concerns. In particular, the amendment specifically targets the reporting requirements to a small universe of multistate taxpayers. Although the advocates may think this narrow target makes their proposal more politically attractive, the U.S. and Oregon constitutions include protections against precisely these sorts of tax classifications. The amendment's focus on a smaller group of taxpayers only increases the propensity for litigation.

We also raised concern about the likelihood of the introduced measure running afoul of I.R.C. § 6103, a federal law strictly prohibiting states from disclosing information from or about the federal return. The proposed amendment appears only to increase the risk of violating these restrictions due to the addition of many items from the federal tax return. As we previously stated in our written and oral testimony, the federal statute expressly provides that a state may lose its information-sharing agreement and face criminal penalties for disclosing confidential taxpayer information.

During the hearing, the advocates suggested that shifting the report from the Department of Revenue and the Legislative Revenue Office to the Secretary of State would alleviate the risks to Oregon's information-sharing agreement with the I.R.S. However, there is nothing in the federal statute to support this claim. In fact, I.R.C. § 6103 states:

“Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal

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return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.” (Emphasis added).

It is worth noting the introduced bill contains a provision in Section 1(6) that grotesquely proclaimed the tax disclosure report did not violate this federal statute. In the proposed amendment, the advocates appear to eliminate such assertion. The omission of this language is perhaps a subtle recognition by the advocates that the bill carries a substantial risk of violating the federal statute.

**S.B. 312 and the -1 Amendment Send a Terrible Message About Investment in Oregon**

As indicated in our earlier comments, S.B. 312 creates a significant hardship for Oregon’s home-grown companies competing with businesses in other states and countries without tax disclosure requirements. Unfortunately, the proposed amendment only makes these matters worse. These reports would expose proprietary trade secrets about business strategy, such as their hiring, value, and location of investments, that a competitor could use to gain a competitive advantage. Some of the information proposed in the amendment is not exclusive to Oregon and, thus, presents a strategic disadvantage for any corporation in the state.

We are gravely concerned that S.B. 312 and the -1 amendment create a counterintuitive incentive for a company to avoid investments and contacts with Oregon to the greatest extent possible to not trigger these tax disclosure requirements. Oregon’s economic recovery is trailing many other states and the national average. We need to create a business, economic, and political environment that welcomes investments from firms of all sizes with open arms. The underlining premise of S.B. 312 that taxpayers must disclose their trade secrets to the public, including their competitors, is unproductive and misguided.

If there are concerns about our tax system’s effectiveness or fairness, we ask that you work with your professional staff to secure the information necessary to inform our debates without alienating individual businesses at a time when their investment and reinvestment is crucial to our economic recovery.

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