HB 2083: Reject the SALT regime for pass-through taxpayers

Testimony for House Revenue – Bennett Minton – 6/20/2023

Chair Nathanson, members of the committee:

I'm Bennett Minton, on behalf of Tax Fairness Oregon, a network of volunteers who advocate a rational and equitable tax code.

If a friend asked me how Congress and legislatures transfer the taxes we all pay to the wealthy among us, I would cite this provision.

The deliberations over this provision occurred in Senate Finance two years ago. This year, Finance voted to expand the benefit to trusts. We opposed the expansion for the reason DOR cited in its Senate testimony: "[I]ncluding trusts as members may increase the complexity of the program due to the difficulty to trace and verify the tax credit." We also believe the expansion could reduce state revenue. That bill, SB 158, got hung up in Ways and Means. Now Chair Nathanson is apparently doing cleanup in the waning hours.

We opposed this provision two years ago. We still oppose it. But we registered as "neutral" because it is in place, and many states are doing something similar. So we throw up our hands. But not before noting that it is grossly inequitable.

For the record, I elaborate on LRO's summary.

In 2017, Congress limited the SALT for people like me: wage earners at the lower end of the top quintile of taxpayers. Congress left room for pass-through owners to get around the limitation, a loophole I'll get to. But for most taxpayers who itemize, the effect of the limitation, along with other changes, was to push them to the standard deduction.

A narrative about the 2017 act was that the Republican-controlled Congress had a political aim: harming taxpayers in blue states by limiting deductions. The intent was to pressure Democratic states to cut taxes and the services that fund them.

There is a counter-narrative: Eliminating deductions results in a more progressive tax code, because deductions are of greater benefit to taxpayers in higher brackets.

For me personally, because of the 2017 changes in my deductions, my taxes increased. I don't object. Deductions are regressive.

What angers me is that my tax increase paid for tax cuts for the very richest Americans, among them pass-through business owners. In 2018, the Oregon legislature also was angry. It disconnected from the new federal pass-through tax deduction.

Meanwhile, many states tried workarounds to the SALT limitation. The IRS repeatedly rejected them, until New Jersey devised a regime that passed muster. That workaround is the basis of the law Oregon passed two years ago: It allows certain pass-through entities to elect an alternate regime that enables their owners to claim an unlimited federal SALT deduction.

The tax is elective. Under it, business owners are allowed an offsetting income tax credit on pro rata share of the entity tax. The effect on Oregon taxes is said to be neutral. But it allows this relatively small set of taxpayers to continue to deduct SALT for federal purposes. It is a loophole.

So now, under the federal law that raised taxes on most itemizers to pay for cuts for business owners, those same business owners get another tax cut thanks to this state law.

To which some lawmakers in Salem said: Well, it doesn't cost the state anything. Still, the legislature was complicit in the federal scheme to exacerbate an income shift from the moderately wealthy to the exorbitantly wealthy.

But not Senator Findley, who said on the floor: (quote)

"I don't know whether there was a lunar eclipse, or a sun spot, but I find myself in agreement with Senator Bernie Sanders. I didn't think I would ever say that. Senator Bernie Sanders thinks this approach is a bad approach, and so do I."

Senator Findley was one of seven no votes, all of them Republicans. I was aligned with them. Politics make strange bedfellows.

The bottom line for TFO is that we prefer this straight extension to SB 158. Even more, we'd like a more transparent and progressive Oregon tax code.