

Oregon Department of Revenue
Tax Professional's Liaison Meeting 7/28/17
Facilitator: Sophia Sakoff
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Minutes

Sophia Sakoff was out and Daron Prara stepped up as facilitator. The meeting opened at 9:00.

Taxpayer Advocate Service (TAS) – Oregon LTA, David Vawser

The topics below can be viewed in more detail at the link below for TAS News and Information:

<https://taxpayeradvocate.irs.gov/news/tax-news>

Private Debt Collection:

Regarding Private Debt Collection, TAS will be monitoring to see if certain taxpayers, such as the elderly, or those in defaulted Installment Agreement, are being talked into making payments they cannot afford. These taxpayers should really be placed into Currently Not Collectible (CNC) status. TAS also has an indicator that they place on their cases to prevent them from being assigned to a private collection agency.

So far, the accounts assigned to the PDCs since May 17th, show 18% are below \$10,000 in income and 48% below \$30,000 in income. The PDCs are not authorized to perform financial analysis, so will they pressure the taxpayers to pay something?

The IRS did agree to omit taxpayers on SSDI (disability). TAS also urged them to exclude taxpayers who are not subject to levies on their SS benefits. So far they have not agreed to this. Of the 875 taxpayers assigned to the PDC who receive SSA benefits, 37% have annual income below \$13,200.

Passport Revocation/Denial:

TAS has some concerns with Passport Revocation/Denial. In the context of passport denial for a seriously delinquent tax debt, notice and an opportunity to be heard prior to the certification are limited. The FAST Act only requires two forms of notice to taxpayers who will be certified (as 'seriously delinquent'):

- a notice sent to the taxpayer close to or at the same time as the IRS certifies the seriously delinquent tax debt ("contemporaneous notice"), and
- language included in Collection Due Process (CDP) hearing notices, explaining the potential certification.

TAS feels that issuing a notice prior to the "contemporaneous notice" mentioned above may provide taxpayers a more meaningful opportunity to contest the notice before it is issued.

TAS also has a concern about equitable treatment. We see that simply paying the tax debt to decrease it to or below \$50,000 (adjusted for inflation) is not enough to reverse the certification. However, if the IRS reverses

the certification for another reason (for example the taxpayer enters into a payment plan or currently not collectable), then the IRS cannot recertify the debt if it is currently at or below the \$50,000 (adjusted for inflation) threshold. So if the taxpayer pays the debt below the threshold, then defaults the IA, their passport is not affected.

Problem Solving Day:

TAS and Oregon's Stakeholder Liaison are working together to bring Problem Solving Day to our next IRS Practitioners Forum this coming October. The idea is to have IRS representatives from Exam, Collection and TAS at the Forum, and to provide time for preparers to bring in those stubborn cases that for...whatever the reason... are having issues getting closure. More to come on this, but it would be by appointment only (or perhaps more like 'choose a time slot').

Lastly, TAS continues to explore opportunities for Taxpayer Digital Communication (TDC). TDC refers to IRS plans to expand use of technology and evolve towards more interactive and efficient ways of doing business... in a secure online environment. There are currently three pilot programs in progress that use secure messaging for communication with taxpayers: Schedule A Correspondence Exams (SBSE), Affordable Care Act (LB&I), and EITC & Levy (TAS). It should be noted that participation in these pilot programs is currently by invitation only.

ID Theft:

In her preface to the TAS Objective Report, Ms. Olson praises the IRS for running a generally successful filing season, including reducing the incidence of identity theft, implementing new accelerated Form W-2 reporting requirements, and matching Forms W-2 against tax returns claiming refunds. But Ms. Olson says taxpayers who require assistance from the IRS are continuing to face significant challenges obtaining it. She attributes part of the problem to resource constraints, saying that IRS funding has been reduced by nearly 20 percent since fiscal year (FY) 2010, after adjusting for inflation.

The "Electronic Tax Administration Advisory Committee" Report to Congress supports this improvement. The reports suggest that this is due to better detection at the front end of the return processing.

Although, the Treasury Inspector General Tax Administration (TIGTA) says the IRS still needs to work on ITIN/SSN mismatches. This is where there are W-2s or other income documents belonging to other taxpayers, but recorded under a stolen SSN. IRS is only marking 51.8% of these accounts.

Question RE: ITIN Applications:

How can taxpayers avoid sending original documents (such as passports) to the IRS with their W-7 application?

Answer: In lieu of sending original documentation, primary and secondary applicants will have the option to use a CAA and designated TAC locations. A dependent applicant can have a passport, national ID card or birth certificate authenticated by a designated TAC location (before visiting, check to see whether your [local TAC](#) offers this service) however, all other forms of documentation (originals or certified copies from the issuing agency) must be mailed to the IRS.

This is from the Q & A at the link below. It also gives the locations (TAC & CAA) and names (CAA).

<https://www.irs.gov/individuals/acceptance-agent-program>

Or go to IRS.gov and enter search for ITIN Acceptance Agents

Board of Tax Practitioners – Howard Moyes

It was asked how many Oregon practitioners are also Enrolled Agents. Based on information received from the IRS, approximately 615 of the 3,434 active Oregon licensees are also Enrolled Agents.

Legislative Update – Ken Ross

Transportation Package

This has been one that's been in the paper a LOT. This is a multi-year effort over two legislative sessions that ended with [HB 2017](#) and several new fees and taxes. That bill has many components administered by many agencies. ODOT/DMV will be responsible for the various fee increases for licensing and registrations and ODOT is responsible to administer the gasoline tax increase. There is an electric car rebate that will be administered by the DEQ and of course, the bill states how the new revenue will be spent. There are some very specific projects that the bill authorizes. The parts of the bill that affect DOR are three new tax programs. There is a tax on new vehicle sales of ½ of one percent of the retail sales price. A new vehicle is anything with less than 7,500 miles on it and sold at a dealership. There is a tax on new bicycle sales of \$15 per bicycle. A bicycle is anything that is "propelled exclusively by human power," must have wheels that are 26" or larger, and have a retail sales price of \$200 or more. **Both of those two taxes are effective January 1, 2018.** The third tax, which affects all of us as wage earners, is a transit tax. **The Transit Tax is effective July 1, 2018.** It is one-tenth of one percent of your gross wages and it is withheld by your employer. A companion bill, [HB 5045](#), passed which provides for funding for the package for the various agencies

Cost Containment

[SB 1067](#) The cost containment bill contains a LOT of changes, most of which have been discussed in various news articles over the last few weeks. At a very high level, SB 1067 does the following things:

- 1) Limits the number of state employees to 1% of the population (down from 1.5%);
- 2) Requires a review of state procurement practices to identify efficiencies;
- 3) Modifies state budgeting procedures to use cost information and deferred maintenance information in the budget process;
- 4) Makes several adjustments to PERS related to lump-sum payments and side accounts used to pay them, reserve fund balances, and other items related to determining the PERS unfunded liability;
- 5) Requires that PEBB and OEBC merge to increase buying power and create efficiencies;
- 6) Requires PEBB and OEBC to figure out ways to ensure that health insurance plan premium growth is limited to no more than 3.4%;
- 7) Prohibits double health insurance coverage of family members by public employees and eliminate the opt-out payment (not until plan year that begins after 7-1-2019);
- 8) **Centralizes state debt collection within OAA and requires DOR to manage the process for assigning accounts out to various private collection firms;** and
- 9) Modifies hospital reimbursements for plans offered by PEBB and OEBC.

There will definitely be more to come on how the state plans to implement this bill because there are many components to it that become effective over a number of years. The part of the bill that affects our work is #8; the centralized collection work in OAA. This was originally in SB 89 and was a concept that we worked jointly with DAS on to improve statewide collections. We will be working with our sister agencies to identify what the

process will be for their workload and how their decisions will impact us. We will be reporting to the legislature in February 2018 on how the various agencies plan to implement this.

DOR Concepts

Collections—We submitted 3 concepts and all 3 of them passed:

[SB 251](#) – Changes the threshold for withholding on an Oregon Lottery prize payment from \$5,000 down to \$1,500.

[SB 254](#) – This bill picked up two of our collection concepts, Financial Institution Data Match (FIDM) and Employer New Hire Report (ENHR). What this means is that we will now have better information for garnishment sources from both financial institutions and employers. FIDM is operative July 1, 2018 and ENHR is operative just as soon as we can get the agreement with the Division of Child Support in place. More to come on these as we head down the implementation path.

Corporate tax—We submitted 9 concepts (in 8 bills) and 7 of them passed:

[HB 2273](#)—This one started out as an MTC uniformity concept related to alternative ways to apportion for corporations. For some reason, there was buzz going around that the department was trying to “slip one over” on people because the concept really couldn’t be THAT straight forward. Well, it was and we weren’t, but that didn’t stop the bill from being gutted and stuffed with one of our other concepts. This session for Corp seemed like a game of musical chairs, just with our bill numbers. So this one ended up being one of the concepts that originally started in HB 2274. This one is a companion to Market-based sourcing and amends the definition of sales to exclude functional test income and treasury function receipts from the sales factor. So, the original MTC uniformity concept related to alternative apportionment did not pass, but this part of our other concept did pass. Confusing, I know. While the bill passed one of our concepts, it didn’t pass in its original form so one of our concepts here died.

HB 2274 -- was originally market-based sourcing for corporate apportionment. This bill number died, but the content of the bill was placed into (HB 2273 (described above) and [SB 28](#), which had originally been our concept on moving from *Joyce* to *Finnigan*. *Joyce* to *Finnigan* DID die.

[HB 2275](#) – changed the terminology from “business income” and “non-business income” to “apportionable income” and “nonapportionable income” respectively. This bill aligns us with the MTC uniformity proposal related to making the vernacular more understandable, and clarifies in statute, consistent with Oregon case law, that there are two separate tests for determining apportionable income; a transactional test and a functional test.

[SB 29](#) – updated the reference to the bankruptcy code for tax attributes from a 1995 date, to 12/31/2016. This will pick up the most recent changes to the bankruptcy code (that occurred in 2005). Because of the date change to 12/31/2016, this provision will be part of the reconnect bill every session so we won’t miss an older reference going forward.

[SB 30](#) – This was a really important bill for the Corp program. This removes the prohibition from using information about foreign affiliates to make a unitary determination for the entities that are transacting business in the United States. So this was a BIG thing for the program, with very little fanfare by the legislature.

SB 31 became [SB 153](#), but it still dealt with the concept we proposed related to insurance companies' separate filing requirement. The department (through Jeff and Jason Larimer) worked tirelessly with industry partners and other agencies to move our concept to something that all parties thought was workable. This was a good outcome based on a collaborative effort between us and industry. We built a lot of trust with our external partners and the members which we were able to capitalize on later in session when the time came.

[SB 32](#) – was the final Corp concept and it related to estate tax penalties. This concept aligned the estate tax program with other programs in that only one 5 percent penalty is assessed, not both, even if both failure to pay and failure to file are present.

Personal Income tax – We submitted 5 concepts and 4 of them passed:

[HB 2283](#)—This was an estimated tax payment issue. Now that this law passed, we can post an estimated tax payment to the date it was paid rather than backdating it to April 15th if the return was filed on extension and the payment was made after April 15th but before the extended due date.

[HB 2284](#)—In audit, we had the authority to share information between taxpayers under audit when those taxpayers were making conflicting claims for dependency exemptions, but that was it. This bill changed that to allow us to open audits and share information between taxpayers who are making ANY conflicting report or return that affects any item of income, deduction or credit for personal income tax. The most common examples are alimony cases and itemized deductions. No longer is that divorce decree going to be considered confidential tax return information under this bill so we don't have to pretend we don't have it anymore. This will be more efficient for DOR and for the taxpayers involved going forward.

[HB 2285](#)—This bill clarified the “time of assessment” for when a tax return is filed. It is now the original due date of the return, determined WITHOUT regard to an extension of time to file, or the date the return is filed, whichever is later. This allows us to send a billing notice at the time a return is filed on extension rather than having to wait until October 15th to send the Notice of Assessment like we had to under previous law.

HB 2286—Our biggest, most important PIT concept was just too much for them to work through this session. This one was what we called “Tax Credit Uniformity” and it had three major provisions:

- it required any agency that certified a tax credit to provide uniform information to us so that we could load that information into the Business Credit Manager in GenTax so we could automate the review of the tax credits;
- it had uniform clawback provisions so that it was clear to us who was responsible to pay back the credit if the original person no longer qualified for it and it was revoked; and
- the credit transfer provisions were made uniform.

Unfortunately, this bill fell in the final hours of the session because the legislature's interest and momentum shifted to Tax Reform, which also ultimately collapsed. The good news is that we made a LOT of progress on this bill during the session and we've been promised a chance to finish this in February 2018. Reps. Marsh and Bentz were part of a work group that studied how to best implement the transferability provisions and they very

quickly got on board with what the department was trying to accomplish, largely in part to a 2-hour tutorial that Shannon Ball provided to the members. More to come on this one, but it will likely be next spring before we know more. We did a lot of work on this bill over the last several months so we were glad to hear that it would come back in February to be finished.

[SB 33](#)—This was our final concept and it was just to change our interest calculation from a monthly calculation to a daily one. In the House, they added provisions to make the state lodging tax and E911 tax programs' interest start dates uniform (aligns with the normal 45 day wait period before we pay interest on refunds) so it went back to the Senate for concurrence.

Personal Income Tax

[HB 2008](#)—This bill updated the amount that a landlord must pay a tenant of a manufactured home park if they close the park for a use other than a manufactured home park. This affects the subtraction as it changes the payment for a single-wide from \$5,000 to \$6,000, a double-wide from \$7,000 to \$9,000, and a triple-wide from \$9,000 to \$10,000.

[HB 2066](#)—This is the tax credit omnibus bill. It extends the sunset date for the Reservation Enterprise Zones and made other changes to enterprise zones, affordable housing lenders credit, rural medical provider credit, and fish screening devices. It added a \$300K income limit for some medical professions (not all of them), and limits the lifetime use of the rural medical credit to 10 years. It sunsets the existing Biomass tax credit and creates a new one for the collection of "bovine manure." It also creates a new tax credit for Klamath County employee training programs in collaboration with community colleges in that rural area. Finally, this bill made permanent the ban on tax credits being allowed to reduce the corporate minimum tax (aka the Con-Way fix).

[HB 2156](#) and [HB 2157](#)—These two bills create a special phone line for tax practitioners and corporate taxpayers. It requires us to put the phone number on certain notices.

[SB 162](#)—Removes DORs rule-writing authority in determining what "business tax credits" are allowed to be claimed by a shareholder of an S-Corporation and instead lists all the credits we've adopted by rule directly into the statute. This was a committee bill but came as a result of an issue we brought to LRO during the interim. This bill also fixed some, although not all, of the technical issues with the new Working Family Child and Dependent Care credit.

[SB 378](#)—Adds Oregon Volunteer Firefighters to the list of entities eligible for the Charitable Checkoff.

[SB 398](#)—Sen. Steiner-Hayward worked with us to figure out a way to get information about the Earned Income Tax Credit out to more people. As a result, all employers in the state will be required to put a statement about the EITC in with the employee's W2 each year. This one is effective on October 6, 2017 but is contingent on BOLI adopting rules instructing employers how to comply.

[SB 701](#)—This is the annual "reconnect" bill so the date is now updated to December 31, 2016.

Of note, they did not extend several tax credits. In other words, they don't exist anymore. The credits they allowed to sunset were all the energy credits (conservation, renewable energy auction, Residential energy, the research and development credit, e-commerce zone credit, biomass, and the wolf depredation credit. There

was a lot of conversation about creating a new credit for solar rooftop installations, but that didn't end up in the final bill.

Corporate Tax programs

[HB 2191](#)—The Department of Justice presented this bill as one of their concepts related to handling what they call “shell corporations.” It gives DOR authority to request the Secretary of State to “administratively dissolve” an entity for being out of tax compliance. It gives the Secretary of State authority to determine what “constitutes a failure to comply with the tax laws of this state” for the administrative dissolution.

Of note, the legislature did NOT extend the special apportionment provisions for Interstate Broadcasters. The three-year experiment of using “commercial domicile” for 2014-2017 is over. These taxpayers will return to using their “audience” to determine where their income should be sourced.

SPA programs

[HB 2400](#)—Amends ORS 305.620 to include local transient lodging taxes as a tax that DOR could administer upon request of a local government. This is the same authority we use for handling the TriMet and Lane Transit taxes as well as the local Marijuana tax programs. This is effective on October 6, 2017 but might not be applicable until all Interagency Agreements are entered into which could be some time from now.

[HB 3180](#)—A State Lodging Tax bill that requires us to share our lodging tax return information quarterly with local governments that also have a lodging tax. If the local government gets the information, they are bound to the same level of confidentiality that we are bound to. There is some rule-writing that needs to happen and the local government has to make a request for the information. This one is effective October 6th, on the 91st day post adjournment.

[SB 235](#)—It ended up as a bill that exempts “enclosed porches” from the Indoor Clean Air Act and that was it. So the little outside “smoking porches” that you see attached to so many buildings, are now clearly exempt from the Indoor Clean Air Act which evidently wasn't the case before. Effective January 1, 2018.

[SB 754](#)—Raises the age to purchase tobacco products from 18 to 21. Colloquially called “Tobacco 21” or “T21” by proponents and in the news. This one is operative January 1, 2018.

Marijuana Tax programs

[HB 2197](#)—This bill allows DOR to enter into agreements with the qualified governing body of a federally recognized Indian tribe for the purpose of making rebates on sales of marijuana items. Early versions of the bill were controversial but thanks to Xann's suggestion on the workgroup, they were able to adopt her elegant fix to the issue the tribes were struggling with into this bill. This is effective October 6, 2017.

[HB 2198](#)—Establishes the “Oregon Cannabis Commission” within the Oregon Health Authority and sets the stage for improved governance of the Oregon Medical Marijuana Program. It also provides a means for excess medical product to make its way into the recreational market if it is tracked in the OLCC's cannabis tracking system among other things. The need for this bill is to ensure that the provisions of the Federal Cole

Memorandum is followed more closely so that Oregon isn't scrutinized by the U.S. Attorney General's Office for its legal marijuana programs.

[HB 3470](#)—Directs the distribution of revenue from tax on marijuana items. The original measure sent the money to the "Common School Fund" (administered by the Division of State Lands) which the proponents admitted was supposed to be the "State School Fund" (administered by the Dept. of Education). So the 40 percent that originally went to the Common School Fund is now headed to the State School Fund for K-12 education. It also clarifies other provisions of how the cities and counties will get their share of the tax revenues and addresses some timing issues. This was originally in HB 2203, then ventured to SB 845, but in a last minute effort was moved to this bill.

[SB 56](#)—Permits Oregon Liquor Control Commission to restrict, suspend or refuse to renew cannabis-related license if probable cause exists for commission to conclude licensee engaged in cannabis-related activity in manner not permitted by licensee's license. Distribution formula is based on number of licenses so any act to restrict, suspend or refuse to renew could have an effect on distributions.

[SB 863](#)—This bill prohibits marijuana retailers from retaining a customer's personal information. They were also required to destroy any personal information that they had retained from prior purchases not later than 30 days after the bill was effective. The intent was always for a purchaser to just "flash" their ID like you do when you purchase alcohol but that was not what retailers and dispensaries were doing. It does provide an exception for the OMMP card number and information to prove the tax exemption eligibility for medical cardholders that make purchases through retail locations. This bill was effective on passage which was April 17, 2017.

[SB 1057](#)—This bill requires DOR to send \$1.8 million dollars to OLCC for the purpose of establishing the seed-to-sale tracking of Medical Marijuana. In each quarter thereafter, we send up to \$1.25 million to fund their ongoing tracking costs. There is a lot of other stuff in this MJ Christmas tree bill, but it mostly doesn't impact DOR operations.

Payroll Tax programs

[HB 2244](#)—This bill extended the Greenlight Oregon Labor Rebate and allows the Oregon Film and Video Office to deduct from labor rebate amounts spent on workforce development and educational efforts for qualifying film production.

HB 3087—This bill did not pass, but we fully expect to see it back in 2019. The bill would have created a paid Family Medical Leave Insurance (FAMLI) program. This is a concept that has been in the works since at least 2007 and we've seen a number of different variations over the year, but this was by far the closest to being actually passed than any other version we've seen. If it had become law, DORs involvement would have been to bank the money from the new tax and also provide collection services for DCBS (the agency that would have to administer the program) through OAA. It was smartly crafted to minimize costs to the state, but it was a very expensive bill to employers in Oregon so the proponents just didn't have the votes this year.

Collections

[HB 2947](#)—This one requires all state agencies to report on liquidated and delinquent debt that they have written off, abated or cancelled. This is effective January 1, 2018.

[SB 693](#)—This bill limited situations when a driver’s license can be suspended and it really wasn’t intended to have an impact on DOR, however, despite our best efforts at educating the members, they eliminated our ability to suspend an occupational license for truckers only. We can no longer suspend a CDL for failure to pay tax, however other occupational licenses may still be suspended. This one applies to conduct that occurs after the effective date of the bill, January 1, 2018.

Questions:

Q: What is the amount of the withholding on lottery winnings?

A: 8%

Q: Regarding the ability to disclose return information (for alimony, dependents, etc): Can the IRS do that as well?

A: Yes

Q: What is the effective date of the transportation tax?

A: July 1, 2018

Q: Will there be a kicker?

A: Yes, percentage will be announced in November. Information about the kicker and 1099-Gs will be discussed at the December 1, 2017 liaison meeting when all information is available.

Efficiency Audits

Representatives from Audit will be back at the October 27, 2017 liaison meeting to review the results of the efficiency audit.

In response to the discussion about writing notes on taxpayer’s returns:

The department is moving to completely automated return processing. Hand written notes on tax returns are not captured which is why we eliminated all instructions for writing at the top of a return and created check boxes to notate when special circumstances exist (such as an “as if” return or Amtrak return). All notes and supporting documentation should be retained with the taxpayer’s records and submitted to us only upon request. Sending notes or documentation that are not required to be submitted with the return creates extra work for department staff and can delay the processing of the return.