MOSSADAMS

Oregon State and Local Tax Update

Rob O’Neill – Partner

Dan Lapour – Senior Manager

Presenters

Rob O'Neill

Partner, *State and Local Tax*

503-478-2339

Rob.Oneill@mossadams.com

Dan Lapour

Senior Manager, *State and Local Tax*

503-478-2196

Dan.Lapour@mossadams.com

Agenda

- Oregon update
  - 2019 Legislative Session
  - Recent Legislative Changes
- State Sales Tax Nexus Update
  - Wayfair v. South Dakota
- Oregon Enterprise Zones

2019 Legislative Session

Where Are We Today?

- Governor Brown has announced four initiatives and investments:
  - Carbon Initiative – implement a limit on carbon emissions
    - Cap & Invest (Trade) – support more renewable energy investment (fine large emitters)
  - Education - $2.0 billion
    - New business taxes and tax reform
  - Medicaid Expansion
    - Raising premiums tax from 1.5% to 2.0% + $2.00/pack cigarette tax; and
    - Increasing the hospital tax from 5.3% to 6.0%
  - Paid Family & Medical Leave
    - Expand statewide employer & employee payroll tax
  - Not hearing much support for PERS reform and cost containment

Education Plan – What to Expect

- Education plan will be felt most by business community
- Education investments target classroom size, school year and graduation rates, mental health and attendance
- Legislature is working on a way to pay for education investments through a new form of business taxation
  - May phase out or replace the corporate income tax
  - May affect personal income tax rates, preferential rates and credits
  - Likely to include a gross receipts tax or business activities tax
  - Likely imposed on all forms of business with some exceptions
- Concern by business community that money won’t go to the classroom and really go to support PERS shortfalls

Who are the Players?

- Oregon Business & Industry (“OBI”) – roughly 1,600 business members
- Coalition for Common Good (“CCG”) (Nike, Educators & Public Employees Union)
- Joint Committee on Student Success (“JCSS”) – 14 member bipartisan legislative committee focused on education investments
- Lobbyists – all representing their respective clients/industries
- Session started on January 22 and will end June 30, 2019
- LRO modeling different revenue scenarios for different revenue models
- Calculation tools are being prepared by OBI and others for taxpayers to run calculations for themselves

Possible Business Tax Reform Proposals

- Ohio Commercial Activity Tax ("CAT")
  - This was tried and failed in 2017 session – taxes all forms of business, but pyramids
  - Senator Hass was bill sponsor
  - Could be one rate or multi-rate tax – both are being considered
- Raise tax through existing law by reducing credits and increasing rates
  - Probably most simple, but further exposes existing boom or bust tax regime
  - Makes Oregon less attractive to do business
  - Might not raise enough money
- Business Activity Tax ("BAT")
  - Reform existing corporation income tax and possibly repeal and replace with BAT
  - Likely transitioned in while CIT is phased out
- Don't expect a sales tax
- Maybe kicker reform

BAT Calculation

- BAT Calculation – Gross receipts less purchases from other businesses multiplied by Oregon sales over total sales equals BAT base. Multiple the BAT base times the BAT tax rate (e.g., 1.0%).

- Results in taxing value added in Oregon only and has no pyramiding like gross receipts taxes do.

- Taxes all forms of business including corporations, partnerships and sole proprietors provided they are not deemed exempt as small businesses.

Key Design Elements

- Tax rate
- Entities subject to the tax
- What is a small business
- Apportionment provisions
- Companies in BAT loss/NOL
- Nexus threshold
- Special industry taxation
- Employee benefits
- Coordination with Oregon tax
- Combined or consolidated filing
- Transition issues
- Exemptions & tax relief

Current Activities

- Various parties and the legislature are evaluating the different alternatives and creating models & revenue projections
- OBI/CCG/JCSS are meeting with key stakeholders on policy
- Senator Hass recently participated in an OBI event comparing a gross receipts tax to a business activities tax and seemed open to design feedback
- Passed legislation may get referred to voters if legislature doesn't work with business community
- Could lead to a very divisive and costly ballot campaign – Measure 97 part II
- Critical the business community work together on a plan they can all live with and not just the focus on one or two companies interests

2019 Introduced Bills

- **HB 2143** – Reinstatement of Oregon's tax haven provisions
- **SB 207** – Requires sales of **<u>all</u>** members of unitary group to be included in the numerator of Oregon apportionment factor if any member has nexus – this is the Finnegan bill
- **SB 206/HB 2148** - $100,000 corporate income tax economic nexus – shouldn't impact PL 86-272 protection
- **HB 2160** – Extends minimum tax to remote sellers – likely constitutional post Wayfair
- **HB 2163** – Removes $100k min tax cap for corps over $100m of sales in Oregon - taxes Oregon sales above at .1% – backdoor GRT
- **HB 2149 and HB 2165** – Worldwide reporting for corporate excise tax and corporate disclosure of where doing business and income

Recent Legislative Changes

Business Income Tax

- Move to market sourcing – ORS Section 314.665(4)

  - Effective for tax years beginning on or after 1/1/2018
  - Restrictive definition of “sales” for factor consideration
  - Changes sourcing for sales from service income and intangibles

Business Income Tax

- Move to market sourcing – ORS Section 314.665

	BEFORE	AFTER
Sourcing for services	Location of income producing activity/cost of performance	To the extent service delivered to location in Oregon
Sourcing for intangibles—rented, leased or licensed	Location of income producing activity/cost of performance	Intangibles used in marketing to consumers—if underlying good/service purchased by Oregon consumer
Sourcing for intangibles-sold	Location of income producing activity/cost of performance	If right to do business-sourced to geographic area; if contingent on use; same as marketing

Business Income Tax

- Special rules—software and digital goods/services– OAR 150-314-0435(7)
- Software—OAR 150-314-0435(7)(a)
  - Prewritten and delivered via tangible media—treated as tangible property
  - Otherwise look to rules for services and other intangibles
- Sale or license of digital goods or services—OAR 150-314-0435(7)(b)
  - Look to rules for services, as if transaction delivered to an individual or business customer.

Individual Income Tax

- Pass-through Deduction
  - HB 4301 passed in the 2018 special session—extends 316.043 benefit to sole proprietorships
  - Attempts to limit applicability
    - 2018 regular session would have limited to $250,000 of income
    - 2017 regular session would have limited to:
      - Businesses with increase in number of employees and increase in average wage; or
      - Businesses with employment in certain industry sectors
        - Look for more proposals in next session

Nexus and *Wayfair*

State & Local Tax Background

- 50 states
- 10,000 Sales/Use Tax jurisdictions
- “Nexus” is the state’s jurisdiction to impose tax
- Sales/use tax – nexus creates responsibility to collect tax from customers and remit to the state

South Dakota v. Wayfair

The SOTUS decision held that physical presence is no longer needed for sales tax nexus

Factors the court found relevant in determining that South Dakota's imposition of sales tax collection requirements on remote sellers does not violate constitutional standards:

- Safe harbor provided:
  - South Dakota $100,000 sales/200 transactions
- Prospective only
- Streamline Sales Tax member
  - Simplified taxing and reporting structures

Solutions by state

As of January 31, 2019

	Economic Nexus Effective Date
Alabama*	10/1/2018
California	4/1/2019
Colorado*	12/1/2018
Connecticut*	12/1/2018
Georgia*	1/1/2019
Hawaii*	7/1/2018
Iowa*	1/1/2019
Illinois	10/1/2018
Indiana	10/1/2018
Kentucky*	7/1/2018
Louisiana*	1/1/2019
Maine	7/1/2018
Maryland*	10/1/2018
Massachusetts*	10/1/2017[1]
Michigan*	10/1/2018
Minnesota*	10/1/2018

	Economic Nexus Effective Date
Mississippi	9/1/2018
Nebraska*	1/1/2019
New Jersey*	11/1/2018
North Carolina*	11/1/2018
North Dakota*	10/1/2018
Ohio	1/1/2018
Oklahoma*	7/1/2018
Pennsylvania	3/1/2018
Rhode Island*	8/17/2017
South Carolina*	11/1/2018
South Dakota*	11/1/2018
Tennessee*	7/1/2017
Texas	10/1/2019
Utah*	1/1/2019
Vermont*	7/1/2018
Washington*	10/1/2018
Washington D.(	1/1/2019
Wisconsin*	10/1/2018
West Virginia	1/1/2019
Wyoming	2/1/2019

[1] Cookie Nexus

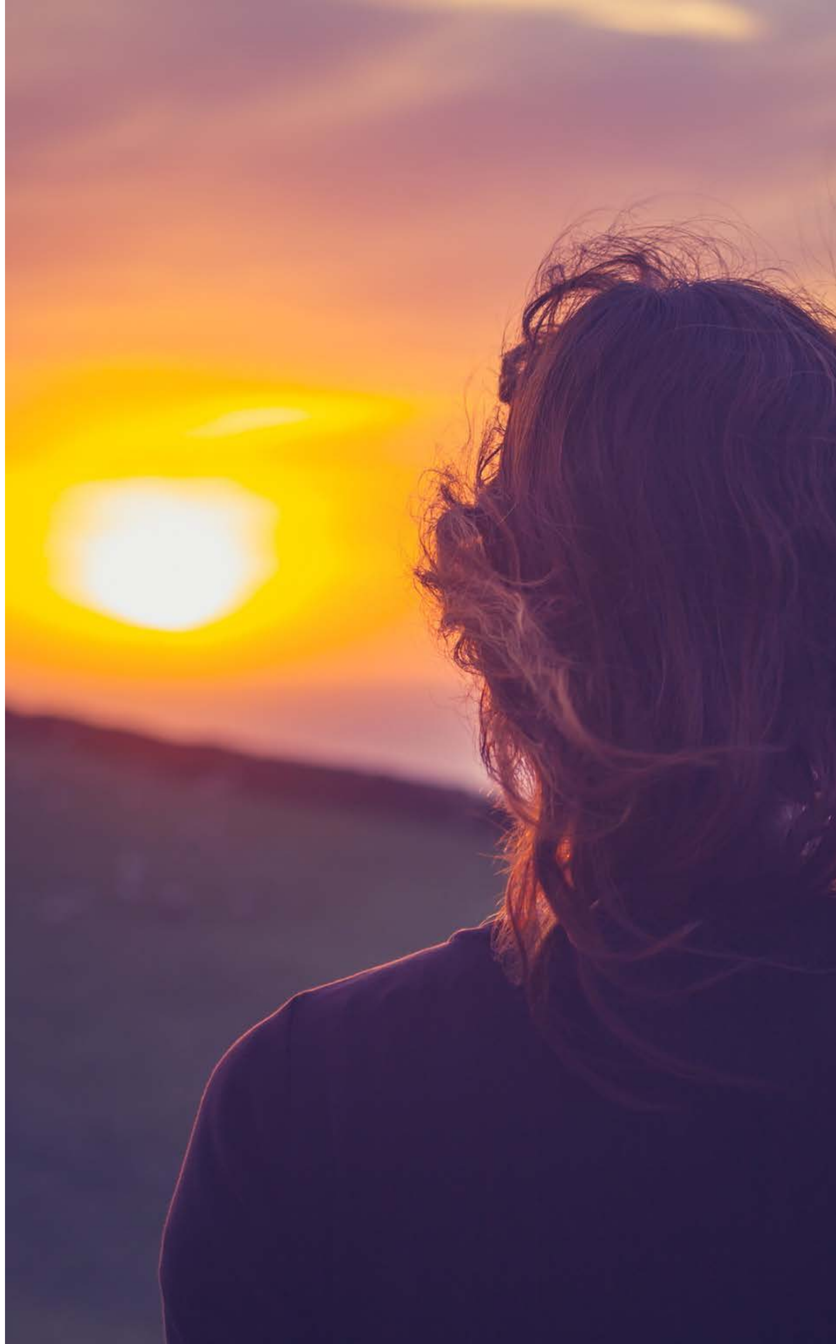
SSUTA Member State

*MTC VDA Program Member State

** Washington D.C. 1/1/2019 pending Congressional approval of legislation

What's next?

- Nexus & taxability evaluation
- Registration and compliance
- Will states be kind?
  - There appears to be a *general understanding (not statutory)* that states must give vendors an opportunity to figure out how to comply



Key Takeaways

1. **Physical presence is no longer the rule; economic presence will be relied on moving forward.**
2. There will be uncertainty over the next 6 months as states respond differently to the SCOTUS ruling.
3. Federal legislation?
4. Stay informed, be methodical in your approach, and seek advice as needed to navigate the coming changes.

Oregon Enterprise Zones

Oregon Enterprise Zone (“E-Zone”) Program

The Oregon E-Zone Program offers an exemption from property taxes for certain businesses that locate or expand their operations within a designated E-Zone. There are currently 69 E-Zones in Oregon and are created and managed by local governments.

Standard Program: A business qualifying under the program will receive a three year property tax exemption on the qualified investment property placed in service within the E-zone.

Extended Program: The property tax exemption may be extended to five years if the business meets certain employee wage requirements.

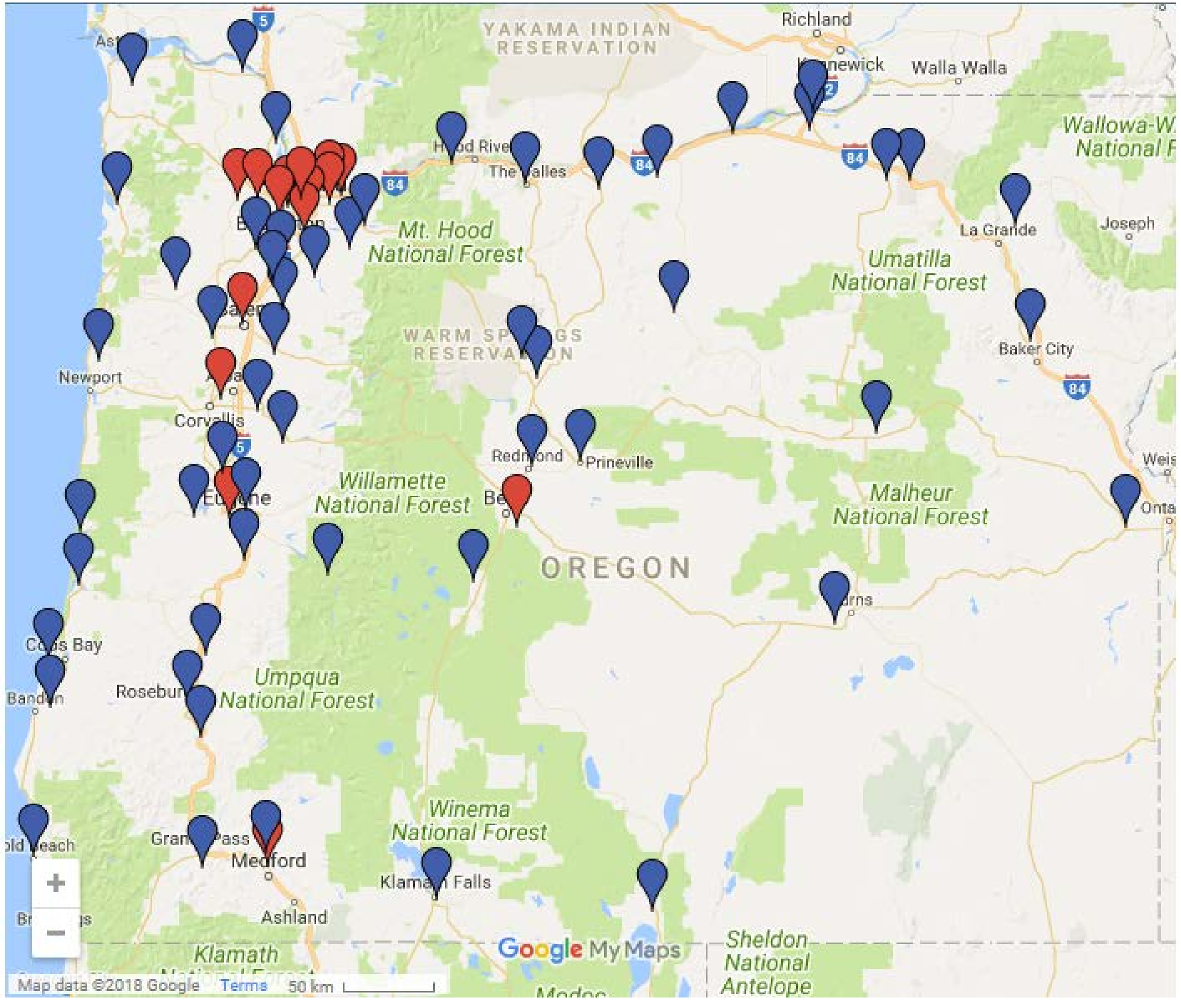
Construction-in-Process Exemption: A business may be eligible for a property tax exemption for construction in process located in an E-Zone which exempts such property for up to two years while the project is under construction.

Qualifications for E-Zone Program

In order to qualify for the E-Zone Program, a business must:

1. Be **located within an E-Zone** boundary;
2. Be a **Qualified Business**;
3. Make **Qualified Investments**; and
4. Meet **Hiring Requirements**

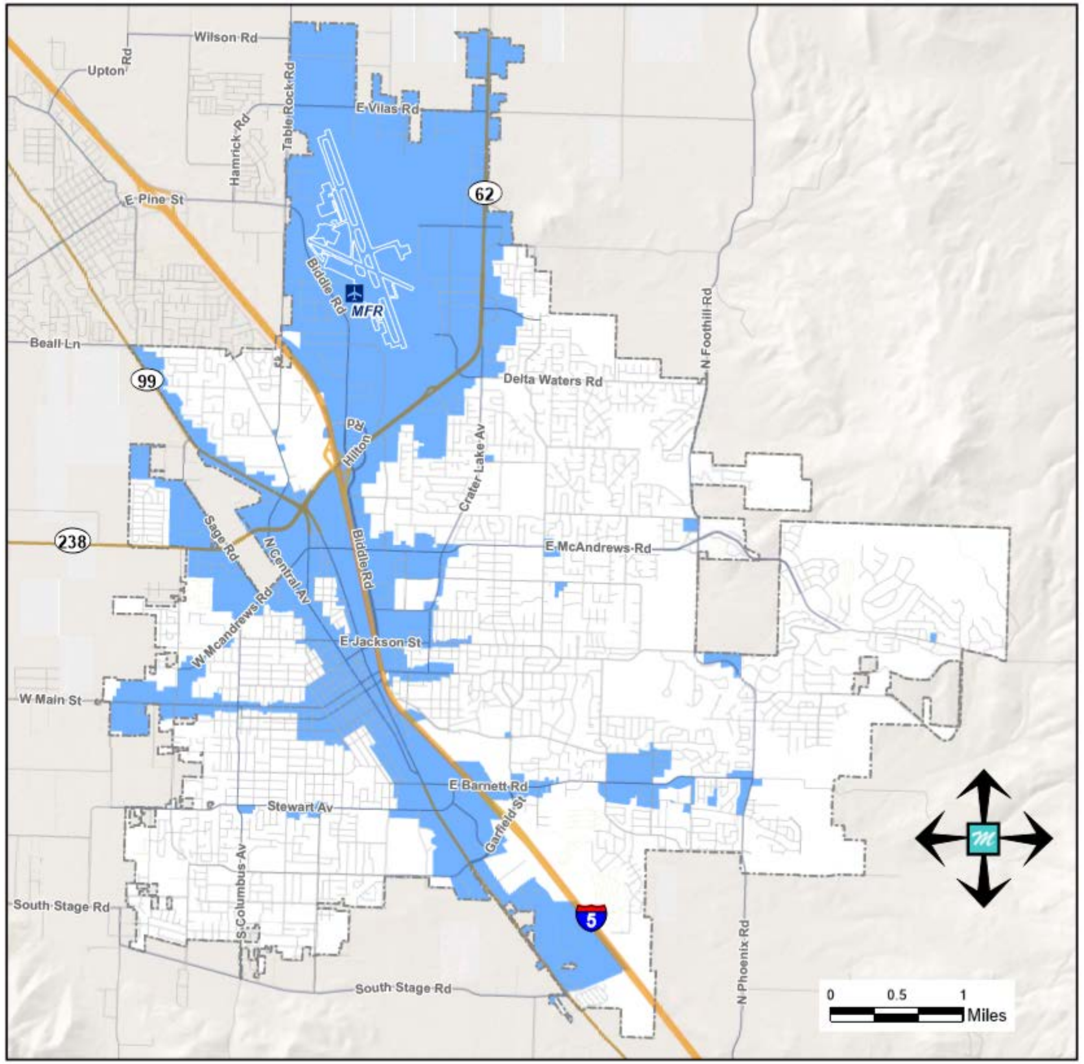
Is your business located within an E-Zone?



Rural Zone

Urban Zone

Example: Medford E-Zone



Qualified Business

Generally, a Qualified Business must be engaged in the business of providing goods, products, or services to businesses through its activities.

Qualifying	Non-Qualifying
Manufacturing	Retail
Assembly	Child Care
Fabrication	Housing
Processing	Health Care
Shipping	Tourism
Storage	Entertainment
Call-Centers	Construction
Headquarters	Financial Services
Hotels/Motels (sometimes)	Professional Services

Qualified Investments

Qualified Property	Non-Qualified Property
• Newly constructed buildings/structures • Additions or modifications to existing buildings/structures • Heavy/affixed machinery and equipment • Personal Property ≥ $50,000 per item	• Land • Supplies • Motorized operator driven machinery, equipment, or vehicles • Rolling Stock • Personal Property < $50,000 per item

Qualifying personal property (including machinery and equipment) must be installed on property that is owned or leased by the business. Additionally, qualifying personal property must be either newly purchased by the business or newly transferred into the E-Zone from outside the county.

Hiring Requirement

General Requirement: A business must increase full-time permanent employment by the ***greater of 1 employee or 10 percent*** of the company's annual average employment within the E-Zone for the previous 12 months.

- The requirement must be fulfilled no later than the date the property tax exemption is claimed on the qualified property under the E-Zone program or April 1 following the year in which the investment in qualified property is made.

Exceptions: E-Zones may authorize by resolution the waiver of the hiring requirements, provided that either one of the two following circumstances are satisfied:

1. Completing an investment of greater than or equal to $25 million; *or*
2. Demonstrating a 10 percent increase in productivity within an 18 month period.

Program Qualification Costs

The Oregon E-Zone program rules allow sponsors to impose and collect a filing fee from businesses that are approved under the program. The filing fee established by the sponsor can be up to one tenth of one percent (0.1%) of the estimated internal cost of the qualified investment expenditures incurred over the standard exemption period (3 years).

Application and Exemption Claim Process

Application for authorization must be submitted **BEFORE** hiring or site work begins.

Exemption claim must be made after January 1 but on or before April 1, in order to be exempt for the following property tax year staring July 1. Late applications are allowed with a late filing fee, ***no later than June 1***.

Long-term Rural Enterprise Zone Facilities

- Thirty-five E-Zones are categorized as Rural E-Zones.
- Businesses located within a Rural EZ may be eligible for a property tax abatement of 7-15 years (compared to the standard 3-5 years).
- In addition the property tax abatement and a construction in process exemption, an income tax credit is available (with governor approval) equal to 62.5% of gross payroll receivable over a 5-15 year period with a credit carryforward of 5 years.
- Any type of business can qualify.

Qualification for Long-term Rural Enterprise Zone

In order to qualify:

1. total facility costs must be 0.5-1% of a county's total real market value (base amount typically $1-25 million);
2. within 3-5 years of the commencement of operations, a number of new full-time employees must be hired and retained through the abatement period (number of employees varies from 10-75 depending on location); and
3. annual average compensation (including benefits) of all workers must be at least 150% of the county average annual wage. The 150% threshold is based on the latest, final figure in the fifth year of operation, upon which the minimum is set for the remainder of the abatement period.

Questions

The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought.

Assurance, tax, and consulting offered through Moss Adams LLP. Investment advisory offered through Moss Adams Wealth Advisors LLC. Investment banking offered through Moss Adams Capital LLC.

THANK YOU