

WORK SESSION

SB 480-A

PUBLIC HEARING

HB 2758

TAPES 175-176A-B 177 A

HOUSE REVENUE COMMITTEE

MAY 26, 2005 1:00 PM STATE CAPITOL BUILDING

Members Present:

- Rep. Tom Butler, Chair
- Rep. Vicki Berger, Vice-Chair
- Rep. Mark Hass, Vice-Chair
- Rep. Brian Boquist
- Rep. Larry Galizio
- Rep. Betty Komp
- Rep. Andy Olson
- Rep. Chuck Riley

Members Excused:

- Rep. Sal Esquivel

Witnesses Present:

- Richard York, Tax Fairness Oregon
- Del Diebig, Tax Fairness Oregon
- Rep. Greg Macpherson, District 38

Tim Martinez, Oregon Bankers Assn.

Bill Manne, U.S. Bancorp, Miller Nash

Jack Monroe, Land Title Assn.

Debra Buchanan, Oregon Dept. of Revenue

Staff Present: Paul Warner, Legislative Revenue Officer
Barbara Guardino Committee Assistant

TAPE 175, SIDE A

006 Chair Butler Calls meeting to order at 1:05 p.m. Opens simultaneous work session on SB 480-A and public hearing on HB 2758. Explains, both bills deal with Department of Revenue promoting the Voluntary Compliance Initiative (VCI) and tax amnesty.

PUBLIC HEARING, HB 2758

WORK SESSION, SB 480-A

031 Richard York Reads testimony against HB 2758 (**EXHIBIT 1**). Bill offers such a huge carrot that it would work against the state. Calls for penalties.

053 Del Diebig Reads written testimony in opposition to HB 2758 (**EXHIBIT 2**). Language in this bill would allow participants in abusive tax shelters to escape state penalties for past tax violations.

117 Diebig Directs members' attention to Exhibit A of his testimony.
Comparison of Abusive Tax Shelter Disclosure Requirements Among

the States and the U.S. Discusses Exhibit B of testimony, The Role of Professional Firms in the U.S. Tax Shelter Industry report.

- 142 Diebig Asks committee to reconsider HB 2758 and pass SB 480-A instead.
- 149 Rep. Galizio Asks panel to respond to claims that enacting SB 480-A would have a chilling effect on the business climate in Oregon.
- 151 York Responds, California enacted this last year and still has a far lower unemployment rate than Oregon. The idea that this would hurt the business climate does not hold water.
- 178 Paul Warner Gives summary of HB 2758 (**EXHIBIT 3**). It is a general tax amnesty program. SB 480 has two additional elements – VCI on abusive tax shelters and a series of other compliance issues. HB 2758 will probably need amending due to a conflict with Oregon’s filing season. Explains differences between the two bills.
- 215 Warner Oregon had amnesty discussions in mid-1980s and again in the special sessions of 2002. Oregon is one of 10 states without one. Amnesty from other states includes sales tax as well as income tax.
- 249 Warner Begins review of revenue impact numbers for SB 480-A (**EXHIBIT 4**). Will have some more amendments next week based on more information from Illinois. In California the number of participants was less than Oregon would have, but the amount collected per return was very large. Anticipates Oregon would have more participants with smaller amounts. Of importance is to make sure there is no double counting. (That is, taxpayers who are already identified as noncompliant and will be paying won’t be counted again.)

- 322 Warner Discusses the Illinois Tax Shelter Voluntary Compliance Program (**EXHIBIT 5**). Illinois has four times the population of Oregon, and collected \$135 million. It has a shorter look-back period. Will update Oregon's numbers based on the Illinois experience.
- 340 Chair Butler Comments on Illinois program, where taxpayers filed several times because of sales and income tax. Wouldn't that affect the numbers?
- 347 Warner Would discount that to some extent. That is too high an estimate. Illinois' Dept. of Revenue had 700 taxpayers in the VCI part of the program. Their penalty structure is *not* vastly different from SB 480. That's more participants than in California.
- 379 Vice Chair Berger Asks for clarification whether penalties are vastly different.
- 394 Rep. Riley Asks about the differences between the two bills.
- 404 Warner The biggest difference is that SB 480-A has a post-amnesty penalty of 25%. Also, it excludes taxpayers who have already been identified. Continues discussion of SB 480-A revenue impact numbers chart. Those who have not been identified are "the great wild card."
- 461 Chair Butler Asks whether Warner's figures are similar to the experience of other states.

TAPE 176, SIDE A

- 020 Warner Responds, there was a study done in the mid-1980s and he based those proportions on it.

025	Chair Butler	Cautions the committee to consider that this accelerates income into the current biennium, which would have been collected later.
029	Rep. Hass	Did California include the previously identified individuals?
031	Warner	Does not believe they did. The general amnesty numbers he worked with were from Michigan. They did a good job of differentiating between the two groups.
044	Warner	Will update gross collections estimate and net revenue from VCI based on what SB 480 looks like now plus new amendments.
047	Warner	Discusses outline of proposed amendments for SB 480-A (EXHIBIT 6). 1) Voluntary Compliance Initiative. Includes discussions of Sections 2 and 3. Discusses look-back.
104	Warner	Discusses appeal rights, Section 15, page 6, lines 33-35.
130	Rep. Hass	Seems like amnesty is for people who come forward and clean their slate. Does not understand whether an amended return would be part of the amnesty. Follow-up questions.
137	Warner	The issue here is that for some who have come forward for abusive tax shelters there may be a gray area involved. The concern is they'd

lose their right to question whether they're involved in an abusive tax shelter.

- 175 Rep. Hass In some ways these appeals are plea bargains. In a criminal case they cannot appeal a plea bargain.
- 180 Chair Butler Explains, that plea does not go away by just filing an amended return.
- 190 Warner Continues discussion of proposed amendments for SB 480-A.
- 2) Other Compliance Measures – Delete sections 32 through 46.
- 219 Tim Martinez As a member of the work group, he believes the amendments are going in the right direction, although the bill still needs more work.
- 225 Bill Manne Concurr, the work group has made a great deal of progress, although there's work to be done with respect to the penalty structure. Remains concerned about the differences between listed, reportable and tax avoidance transactions, and how they are defined at state and federal levels. As the bill is drafted, the failure to avail oneself of the VCI with respect to a listed transaction can increase penalties significantly for the taxpayer. Listed transactions are not the equivalent of tax avoidance transactions.
- 265 Manne The penalty structure is more onerous for the taxpayer than in other states and from the federal code. The federal government doesn't offer amnesty, but we can look at the penalties received for noncompliance. A policy matter for the committee to decide is whether stiffer penalties cause more compliance. His experience is that more penalties do not result in more compliance. There's "the rule of 7's," that is, 7% interest over 10 years doubles the amount owed (100%).

329	Vice Chair Berger	Other states have had success with this. Is Manne saying that reportable should be taken out and listed be left in?
350	Manne	Responds, DOR still has the ability to create a listed transaction for the state of Oregon. Need to look at whether listed it is effective in this bill and whether it reflects what other states have done.
374	Rep. Hass	Asks if Manne is primarily focused on the abusive tax shelter component of SB 480-A.
378	Manne	Yes. As currently drafted, a tax avoidance transaction is a bad thing, while a listed transaction may or may not be bad. Notes that he represents U.S. Bancorp.
385	Martinez	He and Manne are concerned with the VCI portion of the bill. Others besides bankers have similar concerns.
403	Manne	The concern is the policy issue with respect to how much extra penalty and power the DOR should be given in order to make the amnesty work. Other states did not need the broader definitions and substantial penalties in order to have success with voluntary compliance.
416	Rep. Riley	Comments, how much more successful would these states have been with higher penalties than without?
427	Manne	Responds, most taxpayers with noncompliance in their past are not aware of the penalties. Most are shocked to find that they will pay more than double because of the interest.

441 Martinez Part of that will be taken care of by marketing the plan and letting people know what happens if they don't comply.

TAPE 175, SIDE B

035 Rep. Boquist Asks whether similar questions were raised in Senate Revenue.

040 Warner There was a fair amount of discussion about the discretion of the DOR. They decided to give DOR some authority for state-related abuses. The penalty issue was also discussed. Senate worked more closely with the California model than with the Illinois model and decided on a significant "stick."

053 Rep. Greg Macpherson Has sponsored amendments SB 840-A8 (**EXHIBIT 8**) and SB 840-A9 (**EXHIBIT 9**).

066 Warner Notes, SB 840-A7 (**EXHIBIT 7**) contains technical amendments.

070 Macpherson Will focus on other tax compliance features that are part of SB 480-A, and in particular the suggestion that sections 32-46 be deleted (see exhibit 6). Some things would be lost to the public good if these were taken out. Comments on several pieces, beginning with real estate withholding. SB 480-A8 amendment would change this from a withholding requirement to a reporting requirement. Urges committee to pass SB 480-A8 amendment.

125 Rep. Berger Asks if there is any penalty in this amendment if they do not report.

128	Macpherson	No, there is no stated penalty, but perhaps it should be considered.
141	Chair Butler	Comments on section 33(1)(a): “Authorized agent” means an agent who is responsible for closing and settlement services in a conveyance.
166	Chair Butler	Continues, DOR is capable of accessing 1099 data directly. Refers to a letter of response from DOR that indicates the DOR receives 1099 data from the IRS but does not receive data for nonresident taxpayers. Notes, an Oregon resident closing a transaction in Nevada, information would be available from Nevada. Asks Jack Monroe to come forward to discuss the real estate reporting requirement.
107	Jack Monroe	Notes, Chair Butler has identified the questions that he intends to ask others: What is required to be reported under 1099-S and what isn’t? The chair has added another dimension in that some of that information is already available at DOR, so this would be a duplication with additional expense.
212	Chair Butler	Continues quoting from response letter from DOR. Follow-up questions and discussion concerning 1099 data sharing.
231	Macpherson	Appreciates the input from the industry. It is in that spirit that he suggests replacing withholding requirement. Emphasizes the policy issue that the reporting of information to a taxing agency does shape conduct. Access to information is not the same as a report. Adds, some people pay taxes because it’s the right thing to do, while others respond only when tagged with a penalty.
320	Monroe	Notes, language in SB 480-A8, subsection 3, gives DOR rulemaking authority to expand on the nature of the report. That could become a problem if this morphs into something other than an exchange of 1099-related information.

- 259 Rep. Macpherson Did not specifically request subsection 3.
- 363 Rep. Riley In addition to two kinds of taxpayers, we are forgetting about a third kind of taxpayer who will only move if the government owes them money. Those are the taxpayers originally targeted.
- 377 Rep. Macpherson Comments on sections 35-42 of the SB 480-A. When requested by a local government with income taxing authority, then the DOR becomes the collection agent instead of having a separate filing process. This is part of a general theme of improving income tax compliance.
- 407 Chair Butler Comments, there are a number of vehicles that could accommodate local government that will have a separate fiscal impact.
- 414 Rep. Macpherson DOR is working on modifications that would eliminate fiscal impact of this feature of the bill. Urges the committee to leave it in this vehicle. It's consistent with the general policy statement.
- 446 Rep. Macpherson Begins comments on SB 480-A9 amendments, sections 43-44, regarding tax compliance of occupational license holders. Language in the bill is too broad and has generated resistance. SB 480-A9 amendment focuses on authorizing DOR to request that a licensing agency obtain tax identification number from those holding an occupational license. This would allow DOR to do a match to make sure the individual files a tax return.

TAPE 176, SIDE B

- 020 Rep. Macpherson Continues discussion on sections 43-44 of SB 480-A9 amendment.

- 050 Chair Butler Asks what is required of agencies that presently do not request a taxpayer ID number.
- 052 Rep. Macpherson It would only be triggered by a request from the DOR.
- 062 Monroe Comments, this amendment doesn't look like what was requested. Discusses Section 44, subsections 1 and 2. Raises the issue that, at some point in time, DOR will get some 7,000 taxpayer ID numbers from attorneys. Multiply this by over 100 boards and commissions and this becomes costly to process. Advises committee to examine the fiscal implications of this.
- 096 Rep. Macpherson Section 44 (1) is not what he had asked for. Just received SB 480-A9 amendment and that clearly was not his intention.
- 103 Rep. Boquist Comments on how this can be enforced. How does the state bar determine whether a lawyer makes any income? We're telling the agency to decide whether the individual is required to file.
- 112 Rep. Macpherson Appreciates Rep. Boquist's input. Not every lawyer licensed in Oregon practices here. They would be screened out. There are significant costs to practice, so this would be unusual. That would raise a red flag. The licensing agency makes that determination upon request from DOR.
- 156 Vice Chair Berger Is having a philosophical disconnect. When the state issues these licenses, is this the question it wants answered, whether they've also filed their taxes? The more important question is whether they have the qualifications to be doctors or lawyers.

- 177 Rep. Macpherson This is a policy decision for the committee to make. Is comfortable with this. It is a reasonable policy choice.
- 191 Monroe Agrees with Macpherson, it is a policy choice, but refers to revenue statement. These two sections are not revenue generators. Asks, how much money do we want to spend on implementation and for what purpose?
- 214 Chair Butler The inference in the past is that collecting taxes from lawyers has been highly problematic, and DOR had a special audit program for lawyers. DOR Director Elizabeth Harchenko found that this was not the case. To apply a pilot program to lawyers only would not work. DOR already has some tools in its tool chest. Let's see how they work. The SB 480-A9 amendments don't do everything Macpherson had hoped.
- 252 Rep. Macpherson Agrees. Also urges committee not to try to count dollars from these sources. It is the culture of compliance that's important. Local income tax is the most important piece. It will solve a problem.
- 286 Chair Butler Expresses concern as to how much more mandating is desired if local governments want access to the program.
- 300 Rep. Macpherson Responds, this does not mandate local governments to do anything. It tells them they can piggyback on the state collection system.
- 311 Rep. Hass Thanks Rep. Macpherson for raising these points and trying to improve the culture of tax compliance. Does not view this bill as a revenue raiser so much as a compliance program.

- 345 Debra Buchanan Comments on earlier discussion on reportable transactions versus listed transactions and their penalties. There are six reportable transaction categories defined in federal law. If a taxpayer discloses a transaction on his federal return, there is no penalty. DOR should get a copy of this form. If they don't disclose, that's when the penalty comes in. There is no separate state form.
- 379 Buchanan Second, discusses listed transactions. If a taxpayer discloses the information on a back-transaction, there's no penalty. If that listed transaction was abusive, then any additional tax can be charged a penalty. Penalties only apply if a transaction is not disclosed.
- 428 Vice Chair Berger Comments on this look-back issue and asks for clarification.
- 432 Buchanan Clarifies when penalties are placed.

TAPE 177, SIDE A

- 030 Rep. Boquist Begins discussion of SB 480-A7 amendment (exhibit 7). It defines the other potential listed transactions. Also discusses options in the appeal process. Clarifications are in sections 2 and 15 of the bill. It does not address the same issue under reportable transactions.
- 042 Chair Butler Tells Rep. Boquist to continue to work with legislative counsel and Legislative Revenue Office on this bill.
- 045 Vice Chair Berger Asks for ways to make the results easily reportable.
- 064 Chair Butler

Closes public hearing on HB 2758 and work session on SB 480-A.
Adjourns meeting at 3:10 p.m.

Tape Log Submitted by:

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. HB 2758, testimony of Richard York, 5/26/05, 1 pp.
2. HB 2758, testimony of Del Diebig, 5/26/05, 7 pp.
3. HB 2758, Staff Measure Summary, Warner, 5/26/05, 1 pp.
4. SB 480-A, SB 480 Revenue Impact Numbers, Warner, 5/26/05, 1 pp.
5. SB 480-A, Illinois Dept. of Revenue Tax Shelter Voluntary Compliance Program, August 2004, Warner, 3 pp.
6. SB 480-A, SB 480 Proposed Amendments, Warner, 5/26/05, 1 pp.
7. SB 480-A, Amendment SB 480-A7, Boquist, 5/26/05, 2 pp.
8. SB 480-A, Amendment SB 480-A8, Macpherson, 5/26/05, 2 pp.
9. SB 480-A, Amendment SB 480-A9, Macpherson, 5/26/05, 2 pp.