

SENATE REVENUE COMMITTEE
MARCH 7, 2005 8:30 AM STATE CAPITOL BUILDING

Members Present: Senator Ryan Deckert, Chair
Senator Gary George
Senator Rick Metsger
Senator Floyd Prozanski
Senator Charles Starr, Vice Chair

Witnesses Present: Gary Conkling, Oregon Winegrowers Association
Sen. Ben Westlund, District 27
Laurie Wimmer Whelan, OEA Government Relations Consultant
Otto Schell, Oregon PTA
Tricia Smith, Oregon School Employees Association
Julie Brandis, Associated Oregon Industries
John Marhsall, Oregon School Boards Association
Chuck Bennett, Confederation of Oregon School Administrators
Jeannette Holman, Dept. of State Lands
Cyndi Wickham, DSL-Unclaimed Property Manager
Kate Richardson, Oregon State Treasurer's Office

Staff Present: Paul Warner, Legislative Revenue Officer
Mazen Malik, Economist
Steve Meyer, Economist
Mary Ayala, Economist
Barbara Guardino, Committee Assistant

TAPE 57, SIDE A

005 Vice Chair C. Starr Calls meeting to order at 8:38 a.m.

PUBLIC HEARING, SB 899

012 Mary Ayala Gives overview, background of SB 899. Expands from 500,000 to 600,000 the population level above which a county must create a tax supervising and conservation commission if it does not have a county clerk (**EXHIBIT 1**).

PUBLIC HEARING, SB 840

038 Mazen Malik Gives overview of SB 840. Allows wine manufacturers that do not expect to owe wine privilege tax to file annual statements instead of monthly (**EXHIBIT 2**). Counsel is drafting an amendment to make this occur during an annual year rather than a fiscal year. No revenue impact.

080 Gary Conkling See Testimony by the Oregon Winegrowers Association In Support of Senate Bill 840 (**EXHIBIT 3**) verbatim.

095 Vice Chair C. Starr Committee will wait for amendments before passing this bill out.

PUBLIC HEARING, SB 845

111 Steve Meyer Gives overview of SB 845. Designates unused value of gift cards to

be abandoned property after 3 years from date of purchase or last transaction (**EXHIBIT 4**). Prohibits issuing cards with an expiration date or fees. Excludes prepaid phone cards. Takes effect January 1, 2006.

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| 131 | Sen. Ben Westlund | Testifies on behalf of SB 845. Abandoned amounts on cards would be held in trust in perpetuity so citizens could reclaim their value at any time. Bill is a subtle but necessary shift. Up to 40% of the value is not cashed, and this money is not claimed. In Oregon alone \$13.6 million issued just last Christmas season will go unclaimed. This money would be better spent in the common school fund. |
| 192 | Sen. Westlund | Question is, what happens to value of unclaimed cards after a time when they are no longer being used. Bill suggests two changes: 1) expiration date on card 2) expired card reverts to common school fund |
| 205 | Sen. Metsger | Questions and discussion concerning Section 4 (2) line 36. Makes correction – bill will <i>not</i> include an expiration date, it will delete it. Also fees would be eliminated. |
| 240 | Sen. Metsger | Uses example of McDonalds gift card, wonders how gift cards can be traced to a particular state. |
| 247 | Sen. Westlund | Responds, the Division of State Lands says the information collected at the time of sale would be adequate. It would be easy to identify that the purchaser was from Oregon. |
| 270 | Sen. Metsger | Follow-up questions on tracing the state where the gift card was sold. |
| 275 | Sen. Prozanski | It would seem that organizations like McDonalds would have it built into their computers how many gift cards have been sold. |
| 297 | Sen. Westlund | This is an exceptional bill. Asks the committee for support. |
| 335 | Laurie Wimmer Whelan | Testifies in support of SB 845. See written testimony, Oregon Education Association RE: SB 845 Gift Card Bill (EXHIBIT 5). |
| 355 | Whelan | Directs members' attention to Fact Sheet on SB 845 (EXHIBIT 6). Specifies the bill deals with gift cards and not gift certificates. |
| 373 | Whelan | Explains what happens with unclaimed property now in regard to the Division of State Lands. It is held in trust in perpetuity. The same thing would happen with gift cards, and the consumer can make a claim at any time. Also, because common school fund receives interest, it is also an education fund. Everyone wins. |
| 383 | Whelan | "We need some common sense consumer protection." State Lands and State Treasurers' office support this bill. Many other states have passed similar bills. Recommends passage of bill. |
| 418 | Otto Schell | Testifies in favor of SB 845. Oregon PTA supports bill. These cards are wildly popular as a way of raising money for schools. He has a Barnes and Nobel card worth \$10 and the account fee is \$1.50 a month. Makes sense to roll this money over to common school fund. |

TAPE 58, SIDE A

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| 024 | Tricia Smith | Oregon School Employees Association supports SB 845. Fits well in OSEA's efforts to look at every funding source for schools and try to maximize them. Schools will receive \$42 million in next biennium from interest earned on the common school fund. SB 845 will help to double this double this. |
| 044 | Smith | Gives example of her teen-age son who has several gift cards with little value so he does not bother to use them. He thinks it's a cool idea to be able to go to the Internet and recover this money. OSEA supports amendments for effective date and to clarify how the point of sale would be determined. |
| 071 | Chair Deckert | Question concerning face 40% of values cashed. |
| 075 | Whelan | Responds, she has seen numbers that range from 10% to 40%. |
| 079 | Sen. Metsger | Asks for clarification of the difference between gift card and gift certificate. |
| 083 | Whelan | Responds, there is a very explicit difference. Small businesses tend to issue gift certificates and she doesn't want to go after them. She's interested in the larger businesses that issue gift cards. Will get the statutory definition. |
| 102 | Julie Brandis | Associated Oregon Industries opposes this bill. Gift card belongs to the owner. There is no way for a store to track who the owner is. 23 states exempt gift cards from unclaimed property. Increase has been in prohibition on expiration dates. Bill has a conflict in that gift cards don't have expiration date, but the state can place one. Purpose of unclaimed property statute is to reunite the owner and the property. Since the owner is unknown, there's no way to do this. Bill gives the state more rights than the owner. Believes it is unconstitutional. |
| 149 | Brandis | If a gift card is purchased in Portland it is supposed to be a gift to the owner but there's no way to tell what state the owner is in. |
| 165 | Sen. Prozanski | Since 23 states exclude this, so does that mean 27 states include it? |
| 169 | Brandis | Yes, but more states are deciding to do this based on court cases. |
| 175 | Sen. Prozanski | Follow-up questions concerning finding the owner. |
| 184 | Brandis | Responds. |
| 191 | Sen. Prozanski | Why should a merchant benefit from an owner not taking advantage of a gift card? |
| 210 | Brandis | Owner can use a gift card any time she wants to. Retailer might realize benefits from uncashed gift cards but that is the owner's choice, not the retailer's choice. |
| 218 | Sen. Prozanski | Re-words question. |

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| 231 | Brandis | Committee will have a struggle defining what is unclaimed and what just hasn't been used. |
| 244 | Sen. Prozanski | Should retailers have a disclaimer to the purchasers that they will keep the money if it's not used? |
| 251 | Brandis | Responds, that would probably be in the best interest of the state. |
| 261 | Chair Deckert | How did Tennessee court rule? |
| 267 | Brandis | They ruled it did deem a contract between the purchaser and the store. Card could be redeemed at any point since there was no expiration date. |
| 282 | Sen. Metsger | Asks, what is AOI's position on portion of bill that does not allow issuance of a gift card with an expiration date? |
| 299 | Brandis | AOI has no problem with that. |
| 303 | Sen. Prozanski | Asks questions concerning amendments. Assumes they would allow the state to realize money earlier. Suggests, the state should make it clear that it would no longer allow this type of contract. |
| 344 | John Marshall | Testifies in favor of SB 845. OSBA is looking for opportunities to enhance the size of the common school fund. Principal of fund stays, and it's the interest that's used. Earnings will accrue for school districts in perpetuity. OSBA will look at variety of bills to enhance the common school fund. Hopefully the money held in perpetuity will fall into hands of its rightful owners. |
| 386 | Marshall | Unclaimed property is held in trust for the beneficiaries forever. It's not as though the gift cards would be sold, they would be held for the rightful owners. |
| 413 | Chuck Bennett | Testifies in favor of SB 845 representing the Confederation of Oregon School Administrators. Refers to a copy of 1997 fiscal impact statement, from HB 2591 which removed gift certificates from unclaimed property program. Times have changed and the issue now is gift cards. They are computerized. In Delaware 10% of its general fund comes from unclaimed property from other states. This must be discontinued. With this bill unclaimed property is held in perpetuity rather than an expiration date imposed by a retailer. This is a very important change. |

TAPE 57, SIDE B

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| 040 | Bennett | Responds to Sen. Metsger's earlier question about whether this bill affects cards or gift certificates. Urges committee to support SB 845 with any needed amendments. |
| 063 | Sen. George | Questions concerning page 2, line 27, section 3. Value is abandoned if it's not redeemed after three years. How do you maintain ownership on something that's been abandoned? |
| 070 | Bennett | Responds, State Lands could answer that question. |

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| 091 | Jeannette Holman | Testifies in favor of SB 845 (EXHIBIT 7). Gives an overview of unclaimed property in general. Clarifies, as currently worded the bill would include paper gift certificates. Dept. of State Lands will present amendments to exclude these. |
| 123 | Holman | Cites a U.S. Supreme Court case, turn unclaimed property over to the state of last known residence of the owner. That's the state that gets the property. If the owner is not known, holder turns it over to the state of their incorporation. This is like the Delaware situation. |
| 138 | Holman | Third is a transaction test – where the transaction occurred. |
| 161 | Holman | Points to page 1, line 17: State Lands would read that to exclude gift cards issued as a charitable donation to a school. |
| 170 | Holman | Unclaimed property serves 2 purposes in Oregon: <ol style="list-style-type: none"> 1) Owner has a place to go to look for it 2) It benefits the general public. Income is distributed annually to schools. |
| 190 | Holman | Suggests a methodology be put in place to determine residence. |
| 201 | Sen. George | Comments, people can't get cash back when there's a balance on the card, only product. Why can State Lands get cash? Follow-up questions. |
| 211 | Holman | After 3-4 years, State Lands can get cash. Owner can get remaining cash on the Web site. State Lands takes the remaining cash value. The company is no longer liable to the outstanding balance to the owner. |
| 255 | Sen. George | If law says it can be converted to cash, the owner could cash the entire amount without purchasing anything. That could cause a backlash. |
| 275 | Sen. Prozanski | Some stores already give customers a choice of cash back after purchase. |
| 280 | Kate Richardson | Testifies in support of SB 845 on behalf of State Treasurer's Office. Program exists for the benefit of the public while the state seeks the rightful owner. Gives the state motivation to find the rightful owner. Also the bill would protect a gift card in the event a business closes or goes into bankruptcy. Asks committee to support bill. |
| 326 | Sen. George | Comments on transaction costs for tracking so many small balances. Can the state make this pay? Follow-up questions. |
| 347 | Cyndi Wickham | Yes. There is a provision in the law that says any property under \$50 does not have to include an owners' name and address. These would be reported in the aggregate. |
| 360 | Richardson | This would be similar arrangement that stores have with credit balances that are reportable. |

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| 429 | Chair Deckert | If this law passes, the owner could find unclaimed property and redeem cash value. If bill doesn't pass, she cannot redeem it. |
| 481 | Chair Deckert | Adjourns meeting at 10:00 a.m. |

Tape Log Submitted by,

Barbara Guardino, Committee Assistant

Exhibit Summary:

1. SB 899, Staff Measure Summary, Ayala, 3/7/05, 1 pp.
2. SB 840, Staff Measure Summary, Malik, 2/7/05, 1 pp.
3. SB 840, Testimony by the Oregon Winegrowers Association In Support of Senate Bill 840, March 7, 2005, Conkling, 1 pp.
4. SB 845, Revenue Impact of Proposed Legislation, 3/4/05, Meyer, 1 pp.
5. SB 845, Oregon Education Association, March 7, 2005, RE: SB 845 [Gift Card Bill], Whelan, 1 pp.
6. SB 845, Fact Sheet on SB 845, Whelan, 2 pp.
7. SB 845, Testimony of Jeannette Holman, Assistant Director, Department of State Lands, Holman, 2 pp.