

**PUBLIC HEARING AND WORK SESSION: SB 874**

**PUBLIC HEARING: SB 464**

**TAPES 069 A/B**

**070 A**

## **SENATE REVENUE COMMITTEE**

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**MARCH 23, 1999 - 3:00 P.M. - HEARING ROOM A - STATE CAPITOL BUILDING**

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Members Present: Senator Randy Miller, Chair

Senator Thomas Wilde, Vice Chair

Senator Lee Beyer

Senator Tom Hartung

Senator Charles Starr

Staff: Paul Warner, Legislative Revenue Officer

Ed Waters, Economist, Legislative Revenue Office

Joan Green, Committee Assistant

Witnesses: David Kessler, Kessler and Company

Paula Plambeck, NIKE, Inc.

Kathy Berning, Sequent Computer Systems

Susan Browning, Department of Revenue

Mark Siegel, Oregon Federation of Independent Schools

Bob Castagna, Oregon Catholic Conference

Debra Buchannan, Department of Revenue

Paul Phillips, Pac/West Communications

**TAPE 069, SIDE A**

004 Chair Miller Meeting called to order at 3:03 p.m.

PUBLIC HEARING ON SB 874

005 Ed Waters Described SB 874, which modifies the definition of an Oregon resident for personal income tax purposes to conform with provisions in the internal revenue code as they apply to foreign residents.

Distributed revenue impact statement. (Exhibit 1)

015 David Kessler Presented testimony in support of measure. (Exhibit 2)

118 Paula Plambeck Presented testimony in support of measure. (Exhibit 3)

159 Kathy Berning Presented testimony in support of measure. (Exhibit 4)

204 Vice Chair Wilde Does an overseas employee's income have an impact on the amount of taxes owed to the State of Oregon?

231 Kessler If the employee is employed by the foreign subsidiary, no; if the employer is a U.S. based company, yes. Generally most companies have foreign subsidiaries and the employee is employed by the foreign subsidiary.

243 Plambeck Generally those expenses are cross-charged and do not remain in the U.S.

248 Vice Chair Wilde If a foreign subsidiary is not established would it reduce the amount of taxes owed to the State of Oregon?

255 Kessler It could reduce taxes in the State of Oregon if the Oregon corporation employs them, the same is true of payment to an employee working in another state.

264	Vice Chair Wilde	Are there instances where an employee who has derived earnings in a foreign country would be obligated to pay the personal income tax to that country even though the foreign operation would reduce taxes to the State of Oregon?
271	Kessler	The individuals in almost all situations pay income tax to the foreign country.
276	Vice Chair Wilde	The area that would have impact would be very narrow?
279	Kessler	Correct, but the corporate tax will be reduced whether or not the individual is taxed in the State of Oregon.
287	Sen. Beyer	Why is the measure drafted to be retroactive to January 1996?
290	Kessler	The Department of Revenue is currently examining a number of individuals as to whether they are domiciled overseas or in the State of Oregon. The determination is lengthy and expensive, if the measure were retroactive it would save time and money.
305	Chair Miller	Requested if the witnesses concur with the proposed (-1) amendment. (Exhibit 5)
314	Kessler	Yes.
324	Susan Browning	Spoke to the measure. (Exhibit 6)
375	Browning	Continued with testimony and example, (Page 1, Exhibit 6).
443	Chair Miller	Does "uninterrupted period" mean exactly what it says?
434	Debra Buchannan	Correct, with possible exceptions that would need to be researched for Revenue rulings or cases on point regarding the issue.

**TAPE 070, SIDE A**

029	Chair Miller	The difference between the 330 full days in such period and the current interruption is
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five days, correct?

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| 035 | Buchanan     | Cited an example that would meet the criteria, the timeframe floats.  |
| 043 | Browning     | Referenced the first "Ken and Lisa" example and how the "permanent place of abode" affects the statute at this time, (Page 1, Exhibit 6). SB 874 steps away from the three-factored decision and "permanent place of abode" and bases residency more on physical location during a period of time.                                |
| 053 | Chair Miller | It seems to be very narrow, even under these conditions. It does not seem fair to treat overseas employees, as residents of Oregon, because they are attending required meetings at the Oregon-based headquarters.  |
| 081 | Sen. Beyer   | The only change to current law would be in how the stub years are dealt with, correct?  |
| 085 | Buchanan     | Correct to the extent that the person met the 30 day test; in the midyears there would be no change. If an employee returned to the State for 32 days but still met the requirements under SB 874, they would be taxed as a non-resident; it would be a change for those persons.   |
| 091 | Sen. Beyer   | SB 874 would fix the stub year, but under the Internal Revenue Code (IRS) §911(d) (1) if an employee came back for one day would that throw them into a taxable condition?  |
| 095 | Browning     | No, cites IRS code (B); it reads "or" not "and", (Page 2, Exhibit 6). Currently the Department figures it as 30 days in a calendar year; the change would shift to 30 days in a twelve-month period.  |
| 111 | Chair Miller | If an overseas employee were in Oregon for more than 35 days in any given twelve-month period they would owe Oregon taxes?  |
| 115 | Buchanan     | Not if SB 874 were in effect, the measure would create two separate tests.  |
| 140 | Chair Miller | The 35-day period seems very short. Cites an example of an overseas employee's commitments and obligations to attend business meetings in Oregon and then encounters Oregon-based family hardship/death. Is 35 days enough time for that sort of a situation; does the Department of Revenue have discretion for family hardship? |

157	Browning	Yes there is discretion and under the above circumstances discretion would be used.
182	Chair Miller	Does the same rule apply if the overseas employee were assigned to a different state by the parent company?
184	Browning	Yes.
186	Chair Miller	Would an amendment for a 60-day window be acceptable?
190	Browning	A 60-day window would take it away from the industries proposal to tie it to the IRS code.
198	Chair Miller	Is it important to be tied to the IRS code?
206	Kessler	Spoke to uninterrupted period as it pertains to the bona fide resident test; and how it applies to the proposed legislation.
247	Plambeck	Discussed different models that were researched prior to the writing of SB 874. Tying SB 874 to the IRS code gives the measure clarity and provides case laws, if needed. Most of our overseas employees meet the IRS code.
271	Chair Miller	Can an overseas employee maintain a home in Oregon and qualify under the proposed measure?
298	Plambeck	It should have no impact.
304	Browning	The effective date in the (-1) amendment needs some work, (Exhibit 5). If the measure is amended to be retroactive, individuals who have filed under the existing law should be given the same opportunity as those employees whom the Department is currently working with on notices of deficiency. The Department would want to provide equity to all parties under this measure.
326	Sen. Starr	How would this bill affect overseas employees who vote in Oregon elections?

342	Browning	The measure would apply to anyone who met the definition in the IRS code.
359	Paul Phillips	The (-1) amendment would not address the issue raised by Ms. Browning, (Exhibit 5).  Distributed hand-engrossed amendment. (Exhibit 7)
398	Kessler	Adoption of either amendment would be acceptable.
406	Chair Miller	Requested that staff have the hand-engrossed amendment put in LC form, (Exhibit 7).
415	Vice Chair Wilde	Requested an updated revenue impact statement.
430	Chair Miller	Referenced the hand-engrossed amendment and asked Legislative Counsel if they had participated in the drafting of that language, (Exhibit 7).
433	Dexter Johnson	Yes, however since drafting the hand-engrossed language a concern has been raised by the Department of Revenue.

**TAPE 069, SIDE B**

WORK SESSION ON SB 874

018	Chair Miller	MOTION: MOVED (-1) AMENDMENT TO SB 874 BE ADOPTED. HEARING NO OBJECTION, THE CHAIR SO ORDERED.
022	Chair Miller	Requested sense of committee on the conceptual amendment, (Exhibit 7).
027		Consensus to broaden the amendment as requested by the Department of Revenue.

PUBLIC HEARING ON SB 464

048	Ed Waters	<p>Discussed SB 464 Revenue impact statement, which weights out revenue impacts of adopting amendments for each of the proposed scenarios. (Exhibit 8)</p> <p>Discussed the (-1) amendment. (Exhibit 9) The proposed amendment would incorporate the \$200/\$100 credit limits and corresponds to the second column of the top table in the revenue impact statement. (Exhibit 8)</p> <p>Discussed the (-2) amendment. (Exhibit 10) The proposed amendment would incorporate the \$200/\$100 credit limits and corresponds to the second column of the top table in the revenue impact statement, as well as removing the reference to the corporate income tax credit from the original bill, which would remove the corporate income tax revenue impact. (Exhibit 8)</p>
068	Chair Miller	The revenue impact for the 1999-01 biennium would be \$108 million for \$100 tax credit?
071	Waters	Correct. The credit is a dollar for dollar credit against the donation itself and the assumption is that this credit would appeal to people with children in public schools.
078	Chair Miller	The impact statement is based on current behavior and use of tax credits?
081	Waters	No, explained the formula used to arrive at the figures reflected on the revenue impact statement.
093	Vice Chair Wilde	Does the revenue impact statement reflect the 25% figure in the original revenue impact statement?
094	Waters	The original run was pretty rough and based on a different set of assumptions. The runs were changed and different determinations were used in this impact statement.
106	Vice Chair Wilde	What is the anticipated participation rate?
107	Waters	The assumption is 300,000 out of 1.5 million filers would claim the credit.

119	Chair Miller	What is the current percent of filers who claim a deduction for contributions to public education?
121	Waters	This proposal would eliminate the necessity of itemizing deductions to claim the credit so it would be open to a wider cross-section of taxpayers; currently tax credits are available to approximately 42% of the taxpayers who itemize deductions.
145	Mark Siegel	Spoke in opposition to the measure because the relating clause restricts the bill from being extended to include tax credits for monies given to private schools. Would request tabling this measure in favor of SB 126, which maintains the language of SB 464, but has a broader relating clause.
161	Chair Miller	Requested if the witness would object to SB 464 and SB 126 proceeding separately.
177	Siegel	No.
180	Chair Miller	The concern is balancing the public and private schools?
183	Siegel	Yes, the bills are very similar except for the relating clause.
187	Chair Miller	Requested if the proposed tax credit and revenue impact statement would help with solicitations of funds by the witness's organization.
189	Siegel	Tax credits are a great option to the taxpayer; from an equitable point of view would prefer SB 126 be advanced in favor of SB 464.
215	Chair Miller	At what point is it no longer useful to have a credit for purposes of solicitation, is it worth an organizations time to solicit for a \$20 credit?
225	Siegel	Any size tax credit is an empowerment to the taxpayer in that the taxpayer can direct their dollars.
235	Sen. Beyer	Would the tax credit be as appealing if it were \$0.50 on the \$1?



238	Siegel	If it went from the first dollar without the need to itemize, yes. Any reasonable formula would be an incentive for people to direct their income toward a program of choice.
243	Bob Castagna	Spoke to same concerns as prior witness; would prefer SB 126 as the vehicle to move forward as it can be amended to include tax credits for contributions to private schools.
373	Chair Miller	If the credit were reduced would it still be of interest to your organization?
379	Castagna	Yes. Responded to sending SB 464 out of Committee and spoke to why the Oregon Catholic Conference would not be supportive of that.
295	Chair Miller	Requested that if the concept appeals to the Committee thought be given to an appropriate number. Also requested that the Committee consider how to proceed with SB 464 and SB 126, and affording the credit opportunity to both public and private schools.
327	Chair Miller	Meeting adjourned at 4:19 p.m.

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Submitted by, Reviewed by,

Joan Green Kim T. James

Committee Assistant Revenue Office Manager

Exhibit Summary:

1. SB 874, Waters, Revenue impact statement, 1 page
2. SB 874, Kessler, Written testimony, 2 pages
3. SB 874, Plambeck, Written testimony, 2 pages
4. SB 874, Berning, Written testimony, 2 pages
5. SB 874, Plambeck, (-1) amendment, (DJ/ps) 03/22/99, 1 page

6. SB 874, Browning, Written testimony, 2 pages
7. SB 874, Phillips, Hand-engrossed amendment, 1 page
8. SB 464, Waters, Revenue impact statement, 1 page
9. SB 464, Waters, (-1) amendment, (DJ/ps) 03/19/99, 1 page
10. SB 464, Waters, (-2) amendment, (DJ/ps) 03/19/99, 1 page