

Opinion

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OUR VIEW

Oregon's bad spot in business taxation

Oregon's corporate activity tax can be a fiscal bonanza for schools. It's lots of money. The most recent projected gross revenues from the tax are \$1.64 billion for the 2019-21 period and \$2.29 billion for 2021-23.

Can you dream up ways to spend those billions to help students learn? Anybody can.

Is there a cost? What if we told you Oregon was now ranked almost dead last — we are 49th — in the country in corporate taxes.

Approval of the corporate activity tax has been a bragging point for legislators. They brought home the bacon for schools. State Rep. Jason Kropf, D-Bend, used former state Rep. Cheri Helt's vote against the tax in his campaign against her. He said she "voted against funding for Bend-La Pine Schools."

When you bring home the bacon, of course, you take the bacon from somebody. In the case of this tax, it takes the bacon from corporations. The tax applies to taxable Oregon commercial activity in excess of \$1 million. To quote the state, the tax is computed as \$250 plus 0.57% of taxable Oregon commercial activity of more than \$1 million. Only taxpayers with more than \$1 million of taxable Oregon commercial activity must pay.

Now that doesn't sound all that terrible, right? Except, well, \$1 million may sound like a lot of money. But you don't have to be an Intel to bring in \$1 million in revenue. For instance, you don't have to sell a lot of new cars to hit \$1 million. And the tax only lets businesses count a fraction of their expenses. So a business could actually be failing and still have to pay the tax. Now that is terrible.

If that doesn't get your attention, how about tax pyramiding? That's when a tax applies to multiple layers of a product's life cycle. Think about cross-laminated timber or blueberries. They both can go through several stages in the production process and be sold on to the next business at the next stage. At each stage, if the product stays in Oregon, the manufacturer could be paying the tax — making it a tax on a tax.

Many people still would say Oregon legislators were right to pass the tax. Schools need the money. Business needs to pay its share! OK, three more things to think about.

First, if schools need the money, why should only businesses pay the increased taxes? Shouldn't all Oregonians be chipping in?

Second, what about the perception of businesses who do business in Oregon or who might think about coming to Oregon? Some may like the tax because it shows the state's commitment to education. Others may wonder what else might be coming if Oregon legislators are willing to pass a pyramiding tax that also may tax businesses even if they are losing money.

And last, look at where the Tax Foundation puts Oregon's corporate tax rank. We are 49th. That's the second worst in the country. Yes that's one ranking by one organization. And in so many other ways, Oregon is a great place to do business and live. But for business owners and their number crunchers it's a clear signal Oregon may not be the best place to do business.

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Your views

Recalling a seminal moment in American history, 246 years after it happened

April 19, 1775. The gathering storm of growing tensions between colonial residents and the colonial government which represented the British Crown had come to a head. The reasons were taxation without representation and increasingly brutal oppression. Through the night of April 18, 700 British soldiers marched toward Lexington and Concord, Massachusetts. Their purpose was to seize the purported cache of arms and gunpowder belonging to the colonists. The colonists, also referred to as minutemen, being the well-armed militia, responded to the call for assistance in defense from the Brits. They refused

the British command to "throw down your arms! Ye villains, ye rebels." And then the resounding "shot heard around the world" officially started the struggle for our freedom and independence that we continue to this day.

April 19, 1775, stands as a statement of how far a citizen, a well-armed military, if you will, is willing to go to preserve our liberty. George Washington stated this: "A free people ought not only be armed and disciplined but they should have sufficient arms and ammunition to maintain a status of independence from any who might attempt to abuse them which would include their own government."

May God continue to bless America.
Bill Hanley
Baker City

Local historian seeks memories about Royal Cafe

I'm writing about the Chinese who operated the Royal Cafe in Baker City for many years. Many will remember Jack Eng, who worked in the patron area. Co-owners of Jack, who worked in the kitchen and were seldom seen out front, were Allan Eng, Harry Eng, Gan Ong, and Jimmy Eng. Later owners were Henry Wong and Annie Wong. I'd like persons with memories about the cafe to contact me. Especially I would like to here from persons who had contact with personnel who worked in the kitchen, plus memories of serving staff. I may be contacted via email (tubingen@eoni.com) and via phone (541-523-6760).

Gary Dielman
Baker City

Court supports religious liberty

By Robert Dunn

For more than a year, the state of California prohibited my clients, Pastor Jeremy Wong and Karen Busch, as well as countless others from every faith tradition, from meeting with other believers in their own homes to study religious texts, pray and worship together. This is because the state's "gatherings guidance" banned all indoor gatherings in counties where COVID-19 was most widespread and limited such gatherings to no more than three households in all other counties.

These restrictions strike at the heart of Christian practice. As Pastor Wong has attested under penalty of perjury, "communal worship, congregational study, and collective prayer are central tenets of my faith and ministry." Indeed, he says, "every description of the church in the New Testament is that of a physically gathered people."

For this reason, house churches and small-group gatherings have been a core part of the Christian faith for two millennia. And while technology has done much to help us survive the pandemic, these types of religious in-person gatherings, Pastor Wong explained, "are impossible to replicate in an online format."

Wong and Busch were more than willing to hold their Bible studies and prayer meetings safely — requiring attendees to wear masks, socially distance and stay away if symptomatic — but the state refused to allow an accommodation for genuine religious gatherings. Wong and Busch were even willing to hold these gatherings in their backyards, but the state's gatherings guidance prohibited (or sharply restricted) outdoor gatherings as well, even in counties where viral spread was minimal or nonexistent.

After patiently enduring these restrictions for nearly six months, my clients, with the support also of the Center for American Liberty, turned to the federal courts for relief. The First Amendment protects the "free exercise" of religion against government encroachment — whether that religious activity occurs in a church, synagogue, mosque or in the privacy of

one's own home. Thus, even if the state can cancel birthdays and Super Bowl parties, courts must look more closely at government restrictions that curtail religious expression.

Under established Supreme Court precedent, whenever a law burdens religious exercise the court must ask whether it is neutral and generally applicable — that is, whether the law treats religious activity the same way it treats comparable nonreligious activities. If the answer to that question is "no," the court will strike down the law unless it is narrowly tailored to advance a compelling government interest. In other words, the government must show that measures less restrictive of the free exercise of religion could not address its interest.

The gatherings guidance, although applicable to many secular as well as religious gatherings, is riddled with exceptions. For example, the state allows indoor "cultural ceremonies" — including weddings and funerals that are entirely secular — to exceed the three-household limit. The state also allows dozens or even hundreds of people to congregate indoors in buses, trains and airports. Government offices and favored businesses where people gather in close proximity are also allowed to operate.

In parts of the state that fall into the "orange" and "yellow" tiers, even movie theaters and restaurants can operate. But Wong and Busch, who reside in Santa Clara County, which is currently in the orange tier, were prohibited from gathering in their own homes (or backyards) to pray or study Scripture with more than two other people from different households.

Thankfully, that all changed on Friday night, when the United States Supreme Court, in *Tandon v. Newsom*, granted our request for an emergency injunction. As the court explained, government regulations trigger strict scrutiny "whenever they treat any comparable secular activity more favorably than religious exercise. It is no answer that a State treats some comparable secular businesses or other activities as or even less favorably

than the religious exercise at issue."

The court held that the gatherings guidance was subject to strict scrutiny because "California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time." Because the state had not explained — or even attempted to explain — why "it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities," the court issued an injunction permitting worshipers to once again gather in the privacy of their homes to worship God with other believers.

The court's decision in *Tandon* sends a clear and important message to state and local governments that they cannot trample religious liberty while exempting their political allies and favored industries — such as Hollywood and big-box retailers — many of which lobbied hard for special treatment.

Thankfully, Gov. Gavin Newsom appears finally to have heeded that message. This week, "in response to recent judicial rulings," California not only ceased enforcing restrictions on private in-home religious gatherings, but it also eliminated mandatory location and capacity limits on places of worship. Although the state still recommends limiting indoor worship to 25% of capacity in some counties and to 50% in others, religious groups no longer face criminal prosecution and civil penalties for exceeding those limits.

No one disputes that state and local leaders have faced difficult decisions in responding to the pandemic, but as the Supreme Court has now reiterated for the fifth time in five months, the government cannot treat the First Amendment's free-exercise guarantee as a second-class right.

Robert Dunn represents the plaintiffs in Tandon v. Newsom. He is an attorney in the San Jose office of Eimer Stahl LLP.

Letters to the editor

We welcome letters on any issue of public interest. Writers are limited to one letter every 15 days. Email letters to news@bakercityherald.com, or mail to Baker City Herald, P.O. Box 807, Baker City, OR 97814.