



AGC MAINE

THE CONSTRUCTION ASSOCIATION

April 13, 2023

Senator Grohoski, Senate Chair
Representative Perry, House Chair
Members of the Joint Standing Committee on Taxation
100 State House Station
Augusta, Maine 04333

RE: AGC Maine's Opposition to LD 1337 "An Act to Require a Corporation that Files a Tax Return in the State to File a Tax Disclosure Statement"

Senator Grohoski, Representative Perry, and distinguished members of the Joint Standing Committee on Taxation my name is Matthew Marks, I am a Principal at Cornerstone Government Affairs, and writing today on behalf of my client The Associated General Contractors of Maine. AGC Maine is a statewide commercial construction trade association and a Chapter of AGC America.

AGC Maine is opposed to LD 1337 as we believe it will create confusion, false narratives, exposure of competitive information, and lead to policies that are under inaccurate assumptions. It will also provide a distinct disadvantage for firms based here, competing here, and could discourage investment.

The debate over tax disclosure precedes the first tax on corporations in 1909¹ when the Federal government authorized the Corporate Excise Tax. The Revenue Act of 1924 created public disclosure for private and corporate individual returns. The Act provided the names, addresses, and tax payments. That was swiftly changed in 1926 when then President Coolidge and Treasury Secretary Mellon cited cases of scams, and compromising business secrecy. However, the debate continued until the ratification of the 16th Amendment. The IRS established authority through delegated rules to allow certain inspections of records generally for other agencies and officials in legal proceedings. The policy shifted once again when President Nixon was accused of using tax information against his political opponents.

The public can easily misinterpret the publication of tax returns, as there is a substantial difference between tax filings and financial reporting. Tax returns can be lengthy and complicated, and the summary of information that would be required under this law will create unnecessary assumptions. The state government has the expertise and authority to investigate and prosecute violations. When the government creates accelerated depreciation to encourage investment in equipment, it could appear on the public information that the company is less profitable. That could impact investors, confidence, and

¹ Public Disclosure of Corporate Tax Return Information: Accounting, Economics, and Legal Perspectives [David Lenter](#), [Joel Slemrod](#), [Douglas Shackelford](#)
National Tax Journal, Vol. 56, No. 4 (December, 2003), pp. 803-830 (28 pages)

future business activity. In the case of accelerated depreciation, companies, and our economy have benefited from the investment in new equipment, especially during a recession. Those investments create opportunities for suppliers and lenders.

Additionally, this would place Maine firms, and those conducting business here required to file, exposed to their competitors, especially those they might compete against in other states. In the construction industry that would be particularly challenging for firms as the market here is smaller, and during slow periods they choose to bid elsewhere. The opposite is true for developers who may weigh this proposed law before investing in our state. Regardless, it would be detrimental for future laws to be crafted based on the simple reading of tax returns targeting specific business sectors. Section (5) of this bill requires "Total business income and nonbusiness income of the corporation apportioned to the State." Sharing this information will inform competitors of any shift or trend to grow or reduce market share within the state and could compromise a company's strategic plan.

In section, J states "In the case of a publicly traded corporation incorporated in the United States or the affiliate of such a publicly traded corporation, profits before tax reported on the United States Securities and Exchange Commission Form 10-K or a successor form for the corporation, or the affiliated group of which the corporation is a member, for the corporate fiscal year that contains the last day of the tax year for which the return is filed."

The SEC advised against public corporate tax disclosures in the 2002 debate, furthermore, they can request tax returns in civil investigations and have the expertise to compare against financial statements, unlike the assumptions that could be made because of this bill. The belief from regulators was that the public financial reports from publicly traded firms provided a stronger analysis of the corporation's financial status. It was also followed by SEC directives to have executives personally sign and certify their financial results and adoption of the new rules under the Sarbanes-Oxley Act of 2002.

The Sarbanes-Oxley Act states that any corporate officer who knowingly certifies false financial statements can go to prison. The regulations under the act directly address corporate responsibility, increased criminal punishment, and accounting regulations. Additionally, the Act created the Public Company Accounting Oversight Board to oversee public audit companies and auditing standards.

It's our belief this is not necessary and violates the privacy of corporations and may discourage much-needed investment. We respectfully ask the Committee to vote against LD 1337.