

IN THE SUPREME COURT OF THE STATE OF OREGON

DAN HARMON,

Petitioner,

v.

ELLEN F. ROSENBLUM,
Attorney General, State of Oregon

Respondent.

Case No. 61486

AMENDED PETITION TO REVIEW
BALLOT TITLE CERTIFIED BY
ATTORNEY GENERAL

Initiative Petition 14 (2014)

BALLOT TITLE CERTIFIED
June 28, 2013
Initiative Petition
Chief Petitioner: Patrick Green

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Of Attorneys for Respondent

I. PETITION TO REVIEW BALLOT TITLE

A. Petitioner's Interest

Petitioner Dan Harmon is an elector of this State, a person dissatisfied with the ballot title that is the subject of this action, and adversely affected by Respondent's actions. Because Petitioner timely submitted written comments concerning the draft ballot title, he has standing to seek review pursuant to ORS 250.085(2).¹

B. Certified Ballot Title

On June 28, 2013, the Attorney General certified the following ballot title:

Modifies annual minimum tax for corporations with Oregon sales of \$100 million or more

Result of "Yes" Vote: "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$100 million or more, depending on sales above \$100 million.

Result of "No" Vote: "No" vote retains existing law, providing a fixed annual minimum tax of \$100,000 for corporations with Oregon sales of \$100 million or more.

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/ after January 1, 2015. Other provisions.

¹ A copy of IP 14 is attached as Exhibit 1; the draft ballot title is attached as Exhibit 2; Petitioner's comments are attached as Exhibit 3; the Attorney General's explanatory letter is attached as Exhibit 4; and the certified ballot title is attached as Exhibit 5.

II. ARGUMENTS AND AUTHORITIES

A. Introduction

Oregon has two types of corporate taxes: excise and income. *See* ORS 317.005 et seq.; ORS 318.010 et seq. An excise tax is a tax imposed upon businesses for the privilege of carrying on or doing business in the State of Oregon and is based on a business' net income. ORS 317.010 (5). Businesses that have no taxable income must pay an annual minimum tax based upon the business' Oregon sales. ORS 317.090. It is this minimum tax which IP 14 seeks to increase for certain businesses and decrease for certain businesses.

IP 14 is a statutory initiative entitled "Large Corporations Should Pay Their Fair Share I" and is the first of six initiative petitions filed by Our Oregon that would have the net effect of generating revenue.² Its chief petitioners estimate that it would generate \$1 billion of revenue by significantly increasing the minimum tax paid by businesses with Oregon sales of more than \$101,250,000.

B. Standard of Review

On review, this Court must determine whether the title substantially complies with the requirements of ORS 250.035. ORS 250.085(5).

C. The Caption

A ballot title caption must reasonably identify the subject matter of the measure. ORS 250.035(2)(a). For purposes of this Court's review, the "subject matter" of a ballot title is "the actual major effect" or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563 (2011)

² <http://ouroregon.org/20#14initiatives> See first attachment to Exhibit 3. (This document is labeled "Exhibit 1" to Petitioner's comments.)

(citing *Whitsett v. Kroger*, 348 Or 243, 247 (2010)).

The caption does not meet these statutory requirements because it fails to state the actual major effects of IP 14, which is to decrease taxes for some businesses that have Oregon sales of more than \$100 million, and to increase taxes for other business that have Oregon sales over \$100 million. Specifically, the measure decreases taxes for business that have Oregon sales of \$100,000,000 to \$101,249,999; then IP 14 exponentially increases taxes for businesses that have Oregon sales of more than \$101,250,000.³ Businesses that fall into this last category - having Oregon sales in excess of \$101,250,000 - would have their effective tax rate increased from .09% to 2%, which is an increase of 122%. Such a significant tax rate increase is not reasonably identified by the word “modifies.” However, given how IP 14 is drafted – maybe intentionally so – it is understandable why the Attorney General used “modifies” when describing the major effects of IP 14. Nevertheless, this word fails to provide meaningful information and to comply with statutory requirements the ballot title must alert potential signers and voters that the measure both increases and decreases corporate minimum taxes.

Because the ballot title caption does not reasonably identify the subject matter of IP 14, we propose the following caption:

**Increases minimum tax for some corporations with Oregon sales over \$100 million;
decreases for others**

³ The effects of IP 14 are illustrated by the second attachment to Exhibit 3. (This document is labeled as “Exhibit 2” of Petitioner’s comments.)

D. Summary

A ballot title's summary must be a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." ORS 250.035(2) (d). The goal of the summary is to "help voters[] understand what will happen if the measure is approved" and the "breadth of [the measure's] impact." *Mabon v. Myers*, 332 Or 633, 640 (2001) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169,175 (1989)).

The ballot title does not comply with these standards for two reasons. First, the summary does not state that IP 14 would result in a tax increase for certain taxpayers and a tax decrease for other certain taxpayers, and potential signers and voters will reasonably expect such information since the result of "Yes" statement alerts them to these tax increases and decreases. The summary should expand on the information provided in the result statement and summarize the measure's proposed tax increase and tax decrease, especially since there is ample room to provide such information. While it may be possible for some Oregonians to get a calculator, compare the summary to current law, and figure out that the summary describes a measure which would result in a tax increase for some corporations while resulting in a tax decrease for others, it is the purpose of the ballot title to summarize these major effects for the voters.

In the Attorney General's letter accompanying the certified ballot title, the Attorney General admits that the measure will result in an increase for some corporations and will result in a tax decrease for other corporations, depending on the amount of Oregon sales. Exhibit 4, p. 3. However, the Attorney General states that the summary does not need to contain information regarding these effects. Petitioner respectfully disagrees; indeed, it is the purpose of the summary to summarize the measure's major effects, and as currently drafted the summary does

not inform voters which corporations would have an increase in taxes and which would have a decrease in taxes.

The summary is also deficient because it does not inform voters of the purpose of the minimum tax and that it only applies when businesses have no taxable income. The Attorney General declines to include this information because “a proponent’s purpose in proposing a measure is not appropriate to summarize the measure itself.” Exhibit 4, p.4. In so stating, it is apparent that the Attorney General misapprehends Petitioner’s argument, as his comments did not suggest that the purpose of measure’s proponents be stated, but rather that the purpose of the minimum tax be described. Petitioner believes the summary should contain this contextual information because in order for voters to understand the measure, it is necessary for them to understand that the measure only applies when a business has no taxable income.

There is more than sufficient room to include the information suggested by Petitioner when unnecessary verbiage is deleted, such as “filing a tax return under ORS 317.710,” and “properly reported on corporation’s tax return.” While these phrases are contained in the statute IP 14 seeks to amend, they do not provide information which helps potential signers and voters understand the measure.

To address the problems identified, we suggest the following summary:

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations must pay an annual minimum tax for the privilege of doing business in Oregon; corporations having no taxable income must pay minimum tax based on Oregon sales; provides that the minimum tax required to be paid by corporations with Oregon sales of \$100,000,000 or more is \$100,000. Measure requires corporations or group of affiliated corporations with Oregon sales of \$100,000,000 or more to pay annual minimum tax of \$75,000 plus 2% of the

excess over \$100,000,000; decreases minimum tax if corporation's Oregon sales are \$100,000,000 to \$101, 249,999; increases minimum tax if corporation's Oregon sales exceed \$101,250,000. Amendment applies to tax years beginning on/ after January 1, 2015. Other provisions.

III. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court declare that the certified ballot title does not substantially comply with ORS 250.035 and refer the ballot title back to the Attorney General for modification.

DATED this 17th day of July, 2013.

Respectfully submitted,

Jill Gibson Owen, OSB #773301
GIBSON LAW FIRM, LLC

Of Attorneys for Petitioner

Section 1. ORS 317.090 is amended to read:

(1) As used in this section:

(a) "Oregon sales" means:

(A) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes of ORS 314.665;

(B) If the corporation does not apportion business income for Oregon tax purposes, the total sales in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the taxpayer were required to apportion business income for Oregon tax purposes; or

(C) If the corporation apportions business income using a method different from the method prescribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.

(b) If the corporation is an agricultural cooperative that is a cooperative organization described in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing business done with or for members of the agricultural cooperative.

(2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

(a) If Oregon sales properly reported on a return are:

(A) Less than \$500,000, the minimum tax is \$150.

(B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

(E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

(F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

(G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

(H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

(I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

(J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

(K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

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(L) \$100 million or more, the minimum tax is ~~\$100,000~~ \$75,000 plus 2% of the excess over \$100 million.

(b) If a corporation is an S corporation, the minimum tax is \$150.

(3) The minimum tax is not apportionable (except in the case of a change of accounting periods), and is payable in full for any part of the year during which a corporation is subject to tax.

Section 2. The amendments to ORS 317.090 by Section 1 of this 2014 Act apply to tax years beginning on or after January 1, 2015.

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STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

For Immediate Release:
May 30, 2013

Contact: Lydia Plukchi
Elections Division
(503) 986-1518

The Office of the Secretary of State received a draft ballot title from the Attorney General on May 30, 2013, for initiative petition #14, proposing a statutory amendment, for the General Election of November 4, 2014.

The draft ballot title is as follows:

**Modifies annual minimum tax for corporations
with Oregon sales of \$100 million or more**

Result of "Yes" Vote: "Yes" vote modifies minimum tax for corporations with Oregon sales of \$100 million or more by changing the required specified amount, adding additional percentage.

Result of "No" Vote: "No" vote retains existing law, providing specified amount of minimum tax for corporations with Oregon sales of \$100 million or more, without additional percentage.

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/after January 1, 2015. Other provisions.



June 13, 2013

Via Facsimile - (503)373-7414

The Honorable Kate Brown
Secretary of State
Elections Division
255 Capitol Street NE, Ste 501
Salem, OR 97310-0722

Re: Public Comment on Initiative Petition #14 (2014)

Dear Secretary Brown,

I represent Dan Harmon, who is an elector in the State of Oregon and wishes to comment on the draft ballot title for IP #14 (2014). The Attorney General has proposed the following ballot title for IP #14:

Modifies annual minimum tax for corporations with Oregon sales of \$100 million or more

Result of "Yes" Vote: "Yes" vote modifies minimum tax for corporations with Oregon sales of \$100 million or more by changing the required specified amount, adding additional percentage.

Result of "No" Vote: "No" vote retains existing law, providing specified amount of minimum tax for corporations with Oregon sales of \$100 million or more, without additional percentage.

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/ after January 1, 2015. Other provisions.

I. INTRODUCTION

Oregon has two types of corporate taxes: excise and income. *See* ORS 317.005 et seq.; ORS 318.010 et seq. An excise tax is a tax imposed upon businesses for the privilege of carrying on or doing business in the State of Oregon and is based on the business' net income. ORS 317.010 (5). Businesses that have taxable income of \$250,000 or less are taxed at a rate of 6.6%;

businesses that have taxable income of more than \$250,000 are taxed at a rate of 7.6%. Businesses that have no taxable income must pay an annual minimum tax based upon the business' Oregon sales. ORS 317.090. It is this minimum tax which IP #14 seeks to increase.

IP #14 is a statutory initiative entitled "Large Corporations Should Pay Their Fair Share I" and is the first of six initiative petitions filed by Our Oregon that would increase corporate taxes.¹ Its chief petitioners estimate that it would generate \$1 billion of revenue by increasing the minimum tax paid by businesses with Oregon sales of more than \$101,250,000.

II. CAPTION

ORS 250.035(2)(a) requires a ballot title to contain "[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure." To comply with this standard, case law requires that the caption identify the proposal's subject matter in terms that will not "confuse or mislead potential signers and voters." *Kain/Waller v. Myers*, 337 Or 36, 40 (2004). The Oregon Supreme Court recently emphasized that the "subject matter" is the "actual major effect" of the measure. *Lavey v. Kroger*, 350 Or 559 563 (2011). If a draft ballot title is challenged for failure to comply with these requirements, upon review the Oregon Supreme Court's "initial task is to determine whether the title prepared by the Attorney General is unfair or insufficient." *Remington v. Paulus*, 296 Or 317, 320 (1984).

The draft caption ("Modifies annual minimum tax for corporations with Oregon sales of \$100 million or more") does not meet these statutory requirements because it fails to state the actual major effect of IP #14, which is to substantially increase the tax rate for businesses that do not have taxable income but have Oregon sales of more than \$101,250,000. Indeed, as indicated by the measure's chief petitioners, IP #14 is intended to raise \$1 billion in new tax revenue. As such, the caption's use of the word "modifies" does not reasonably identify IP #14's actual major effect and will likely mislead potential signers and voters, who will reasonably assume that a tax increase would be labeled as such. Nevertheless, neither the caption nor the rest of the ballot title uses the word "increase." In fact, because the draft ballot title gives voters no information that IP #14 raises revenue, a voter could just as easily assume that IP #14 decreases taxes overall, which it, in fact, does for some corporations. Indeed, as written, a voter would have to compare IP #14 to the current statute – ORS 317.090 – and use a calculator in order to know that IP #14 decreases taxes for some corporations but generates revenue by raising taxes overall.

However, given how IP #14 is drafted – maybe intentionally so – it is understandable why the Attorney General used "modifies" when describing IP #14. Although the purpose of IP #14 is to generate \$1 billion in new tax revenue, the measure initially decreases taxes for business that have Oregon sales of \$100,000,000 to \$101,249,999; then IP #14 exponentially increases taxes for businesses that have Oregon sales of more than \$101,250,000. Businesses that fall into this last category - having Oregon sales in excess of \$101,250,000 - would have their effective tax rate increased from .09% to 2%, which is an increase of 122%. Such a drastic

¹ <http://ouregon.org/20#14Initiatives> See Exhibit 1.

tax rate increase is not reasonably identified by the word "modifies." Nevertheless, because IP #14 does decrease taxes for a certain corporations, the caption should also indicate that effect.

The effects of IP #14 is illustrated by the attached graph and charts. See Exhibit 2.

Because the draft ballot title does not reasonably identify the subject matter of IP #14, we propose the following caption:

**Increases minimum tax for some corporations with Oregon sales over \$100 million;
decreases for others**

III. RESULT OF "YES" VOTE

The draft "Yes" statement reads as follows:

Result of "Yes" Vote: "Yes" vote modifies minimum tax for corporations with Oregon sales of \$100 million or more by changing the required specified amount, adding additional percentage.

ORS 250.035(2)(b) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if the measure is approved. The purpose of this portion of the ballot title is to "notify petition signers and voters of the results of enactment that would have the greatest importance to the people of Oregon. *Novick v. Myers*, 337 Or 568, 574 (2004).

The draft "Yes" statement does not meet this requirement because the word "modifies" does not sufficiently explain the results of IP #14 if the measure is approved, which is an increase of the corporate minimum tax for some corporations and a decrease of the corporate minimum tax for other corporations. More specifically, IP #14 decreases the minimum tax for corporations with Oregon sales between \$100,000,000 and \$101,249,999; then IP #14 substantially increases the minimum tax for corporations with Oregon sales exceeding \$101,250,000. The fact that IP #14 was cleverly written so as to avoid the word "increase" does not change the effect of this revenue generating measure and the ballot title must notify petition signers and voters of this result. However, we also recognize that to comply with statutory standards, the "Yes" statement should also inform Oregonians that IP #14 would decrease taxes for certain corporations. As written, the draft ballot title does not inform voters of either result.

To address this defect, we suggest the following statement:

Result of "Yes" Vote: "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$100 million or more, depending on amount of sales above \$100 million.

IV. RESULT OF "NO" VOTE

The Attorney General issued the following draft "no" statement:

Result of "No" Vote: "No" vote retains existing law, providing specified amount of minimum tax for corporations with Oregon sales of \$100 million or more, without additional percentage.

ORS 250.035(2)(c) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if voters reject the measure. This means that the statement must explain to voters "the state of affairs" that will exist if the initiative is rejected, i.e., the status quo. It is essential that the "no" vote result statement relate to the subject matter of the proposed measure to avoid misleading petition signers or voters about the effect of their signature or vote. *Nesbitt v. Myers*, 335 Or 219 (2003), (original review) 335 Or 424, 431 (2003) (review of modified ballot title).

The draft "No" statement does not comply with these requirements because it does not explain the current law in terms that are meaningful and informative to potential signers and voters. Although the draft "No" statement explains that a "specified amount of minimum tax" would be retained, this does not tell Oregonians anything because there is no context and the current specified minimum tax is not provided, even though there is room to provide such information. Furthermore, there is sufficient space to include information regarding when the minimum tax is triggered.

To cure these defects, we suggest the following "No" statement:

Result of "No" Vote: "No" vote retains existing law, providing \$100,000 minimum tax for corporations with no taxable income but with Oregon sales of \$100 million or more.

V. SUMMARY

The Attorney General has issued the following draft summary:

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/ after January 1, 2015. Other provisions.

ORS 250.035(2)(d) requires that a ballot contain a "concise and impartial statement of not more than 125 words summarizing the measure and its major effects." "[T]he purpose of the summary is to 'help voters understand what will happen if the measure is approved' and 'the breadth of its impact.'" *Mabon*, 322 Or at 640 (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175 (1989)).

The draft ballot title does not comply with these standards for several reasons. First, as stated above, the summary does not contain the word "increase," which is what will occur to minimum taxes overall if IP #14 is approved. Although the summary does specify the current minimum tax and the proposed minimum tax, the summary also must help voters understand the full breadth of IP #14's impact, and "increase" is a concise and impartial word that will help provide this understanding. Similarly, the summary should include information regarding which corporations will have their minimum taxes decreased. While it may be possible for some Oregonians to do their own math and figure out that the draft summary describes a measure which would result in a tax increase for some corporations while resulting in a tax decrease for others, it is the purpose of the ballot title to summarize these major effects for the voters.

The draft summary also fails to provide essential information, such as the purpose of this tax and the fact that only businesses with no taxable income are subject to the minimum tax. There is more than sufficient room to include this important information by deleting some information which is unnecessary, such as "filing a tax return under ORS 317.710," and "properly reported on corporation's tax return." These phrases are contained in the statute IP #14 seeks to amend; however, they do not provide information which helps potential signers and voters understand the measure. Finally, the phrase "increases incrementally" is inaccurate because – as chart 3 shows – the current minimum tax rate fluctuates and the amount of tax does not increase in increments.

To address the problems identified, we suggest the following summary:

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations must pay an annual minimum tax for the privilege of doing business in Oregon; corporations having no taxable income must pay minimum tax based on Oregon sales; provides that the minimum tax required to be paid by corporations with Oregon sales of \$100,000,000 or more is \$100,000. Measure requires corporations or group of affiliated corporations with Oregon sales of \$100,000,000 or more to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100,000,000; decreases minimum tax if corporation's Oregon sales are \$100,000,000 to \$101, 249,999; increases minimum tax if corporation's Oregon sales exceed \$101,250,000. Amendment applies to tax years beginning on/ after January 1, 2015. Other provisions.

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Comments on IP #14
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Thank you for considering our comments to the draft ballot title.

Very truly yours,

Jill Gibson Odell
Gibson Law Firm



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

June 28, 2013

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Modifies Annual Minimum Tax For Corporations With
Oregon Sales Of \$100 Million Or More
DOJ File #BT-14-13; Elections Division #14

Dear Mr. Trout:

We have received the comments from Patrick Green (through Steven Berman) and Dan Harmon (through Jill Odell) about the draft ballot title for the above-referenced measure. This letter summarizes those comments, our responses to them, and the reasons why we altered or declined to alter the ballot title in response. This letter should be included in the record if the Oregon Supreme Court is asked to review the ballot title.

The Caption

ORS 250.035(2)(a) requires that a ballot title contain "a caption of not more than 15 words that reasonably identifies the subject matter of the measure."

Commenter Harmon contends that the draft caption does not comply with that requirement because of the word "Modifies." He contends that the measure's intent is to raise revenue; but he points out that, based on the actual amounts of a corporation's sales, the result might be either an increase, or a decrease, in the overall taxes. In Harmon's view, the caption should state, instead, that the measure increases the minimum tax for some corporations with \$100 million or more in sales, while decreasing it for others.

We decline to adopt Harmon's suggestion because we believe that the term "Modifies annual minimum tax" encompasses the same information by telling voters that the minimum tax will change.

Thus, we certify the following caption:

EXHIBIT 4

**Modifies annual minimum tax for corporations with Oregon
sales of \$100 million or more**

The “Yes” Result Statement

ORS 250.035(2)(b) requires a ballot title to contain “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.”

Green contends that the draft “Yes” statement does not comply with that requirement, first, because the term “adding additional percentage” is confusing and redundant. He also contends that the term “additional percentage” is misleading because it falsely suggests that current law already contains a percentage of tax. We agree with both comments. Thus, we delete “adding additional percentage” from the “Yes” statement (and the corresponding wording from the “No” statement).

Next, Green contends that the phrase “specified amount,” although technically correct, is inexact. He suggests that the “Yes” statement include the specified amount of tax required by the proposed measure. The 25-word limit effectively prevents us from including that level of detail in the “Yes” statement. We note that the specific amount is included in the “Summary” statement.

Harmon contends that the “Yes” statement is deficient because the term “modifies” does not sufficiently explain the result of the measure. In his view, the “Yes” statement must inform voters that the measure will result in an increase in the minimum tax for some corporations with sales of \$100 million or more, and a decrease for others. We agree that rewording the “Yes” statement would be more helpful to voters in understanding the result of a “Yes” vote. Thus, we have changed the “Yes” statement to include wording similar to Green’s suggestion (although we cannot adopt his precise wording due to word limitations).

Accordingly, we certify the following “Yes” result statement:

Result of “Yes” Vote: “Yes” vote increases or decreases minimum tax for corporations with Oregon sales of \$100 million or more, depending on sales above \$100 million.

The “No” Result Statement

ORS 250.035(2)(c) requires a ballot title to contain “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.”

Harmon contends that the draft "No" statement does not comply with that requirement because it does not include the actual amount of minimum tax that current law requires for corporations with Oregon sales of \$100 million or more. He also believes that the "No" statement should state "when the minimum tax is triggered," which he indicates is when a corporation has no taxable income.

We accept Harmon's first comment, and we include a reference to the current "fixed annual minimum tax of \$100,000 for corporations with Oregon sales of \$100 million or more[.]" We decline to accept his second comment, however, as it depends on a more complex understanding about corporate taxes that is outside scope of the proposed measure (which pertains only to a change in the amount of minimum tax required).

On our own review of the measure, we have inserted the phrase "a fixed" before "annual minimum tax * * *". Thus, we certify the following "No" statement:

Result of "No" Vote: "No" vote retains existing law, providing a fixed annual minimum tax of \$100,000 for corporations with Oregon sales of \$100 million or more.

The Summary Statement

ORS 250.035(2)(d) requires a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

Harmon contends that the draft summary does not comply with that requirement for a number of reasons. First, he argues (as above) that the summary does not indicate that the measure would "increase" minimum taxes for corporations. But as he acknowledges, the measure will not necessarily result in an increase in taxes. Depending on the precise amount of Oregon sales that any given corporation has, the amount of minimum taxes may actually decrease.

Next, Harmon contends that the summary should "include information regarding which corporations will have their minimum taxes decreased." In other words, he believes that the summary should contain the ranges of specific amounts of annual Oregon sales that would result in an increase in taxes, and those that would result in a decrease in taxes. That level of detail about the potential result of the measure in particular circumstances is not required to summarize the measure itself. And in fact, that information might be misleading, by falsely suggesting to voters that the measure includes that level of specificity.



Next, Harmon contends that the summary is deficient for not including a description of the "purpose" of the measure. But a proponent's purpose in proposing a measure is not appropriate to summarize the measure itself.

Next, Harmon contends that the summary should include a statement indicating that "only businesses with no taxable income are subject to the minimum tax." Even if that is true, that information is outside the scope of this measure, which deals only with the minimum tax itself.

Finally, Harmon contends that the phrase "increases incrementally" is inaccurate because "the current minimum tax rate fluctuates and the amount of tax does not increase in increments." We do not fully understand that comment. Current law does provide that the minimum tax increases incrementally based on the amount of a corporation's Oregon sales. Although we did not explain in the summary that each incremental increase represents a range of Oregon sales, that level of detail is not necessary to summarize the measure for voters.

For the foregoing reasons, we certify the following summary statement, with no changes:

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/after January 1, 2015. Other provisions.

 Ryan Kahn 
Assistant Attorney General
ryan.kahn@doj.state.or.us

RPK:rpk/4390605

Enclosure

RECEIVED

BALLOT TITLE

2013 JUN 28 PM 1 34
KATE BROWN
SECRETARY OF THE STATE

Modifies annual minimum tax for corporations with Oregon sales of \$100 million or more

Result of "Yes" Vote: "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$100 million or more, depending on sales above \$100 million.

Result of "No" Vote: "No" vote retains existing law, providing a fixed annual minimum tax of \$100,000 for corporations with Oregon sales of \$100 million or more.

Summary: Currently, ORS 317.090 provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax increases incrementally based on amount of Oregon sales properly reported on corporation's tax return; provides that the annual minimum tax required to be paid by corporations with Oregon sales of \$100 million or more is \$100,000. Measure modifies annual minimum tax to be paid by a corporation or group of affiliated corporations with Oregon sales of \$100 million or more; requires such corporations to pay annual minimum tax of \$75,000 plus 2% of the excess over \$100 million. Amendment applies to tax years beginning on/after January 1, 2015. Other provisions.

CERTIFICATE OF FILING

I hereby certify that I electronically filed the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 14) with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on July 14, 2013.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 14) upon the following individuals on July 14, 2013, by delivering a true, full and exact copy thereof via U.S. Mail to:

Ryan Kahn OSB 002919
Department of Justice
1162 Court St. NE Salem, OR 97310-4096
Telephone: (503) 378-4402
Facsimile: (503) 378-6306
Attorneys for Respondent

Patrick Green, Chief
Petitioner
813 SW Alder Street
Portland, OR 97205

and upon the following individual via facsimile transmission:

Kate Brown, Secretary of State
Elections Division
255 Capitol St. NE, Ste 501
Salem, Oregon 97310-0722
Fax: 1-503-373-7414

DATED this 17th day of July, 2013.

GIBSON LAW FIRM, LLC

A A A A

Jill Gibson Odell, OSB 973581
of Attorneys for Petitioner