



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

August 9, 2013

The Honorable Thomas A. Balmer
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97310

Re: *Dan Harmon v. Ellen F. Rosenblum, Attorney General, State of Oregon*
SC S061486

Dear Chief Justice Balmer:

Petitioner Dan Harmon has filed a ballot title challenge in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Program Representative Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Ryan Kahn

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

RPK:chc/4495188

cc: Jill Gibson Odell/without encl.
Patrick Green/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

DAN HARMON,

Petitioner,

v.

ELLEN F. ROSENBLUM, Attorney
General, State of Oregon

Respondent.

Supreme Court No. S061486

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITION TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 14
(SUPREME COURT)

INTRODUCTION

Dan Harmon (petitioner) has asked this court for review of the certified ballot title for Initiative Petition No. 14. That proposed measure would amend ORS 317.090 to modify the annual minimum tax for Oregon corporations with sales of \$100 million or more. In particular, it would modify that annual minimum tax by changing the existing, fixed amount of \$100,000 per year to \$75,000 per year plus 2% of the excess over \$100 million. (Ex 1).

Pursuant to ORAP 11.30(6), respondent Ellen Rosenblum, the Oregon Attorney General, submits this answering memorandum. This memorandum expands on a letter, dated June 28, 2013, from the Attorney General's office to Stephen Trout, Director of the Elections Division. In that letter, the Attorney General's office responded to the comments that petitioner (and one other commenter) made about the draft ballot title.

This court reviews ballot titles to determine whether they substantially comply with the requirements of law. ORS 250.085(5).

ARGUMENT

A. The caption substantially complies with ORS 250.035(2)(a).

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.” The certified caption for IP 14 reads:

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

Petitioner contends that the caption does not substantially comply with ORS 250.035(2)(a) because, in his view, it does not state the “actual major effects” of the measure. (Pet 4). He views the “major effects” as “to decrease taxes for some businesses that have Oregon sales of more than \$100 million, and to increase taxes for other businesses that have Oregon sales over \$100 million.” (Pet 4). Thus, he believes the caption should read, “Increases minimum taxes for some corporations with Oregon sales over \$100 million; decreases for others[.]” (Pet 4; boldface removed).

But the certified caption conveys essentially the same information that petitioner contends must be in the caption, albeit in more general terms. That is, by informing voters that the measure “[m]odifies annual minimum tax for

corporations with Oregon sales of \$100 million or more[,]” the caption informs voters that the minimum tax will change, while not indicating, one way or the other, whether that the change will necessarily be an increase or a decrease. That is sufficient to reasonably identify the “subject matter” of the measure.

Moreover, the wording that petitioner contends must be in the caption might actually result in confusion to voters about the actual effect of the measure. In particular, by stating that the measure would increase the minimum tax for some corporations with sales of \$100 million or more, and decrease it “for others,” the proposed caption might be read to suggest that the measure applies to corporations *other than* those with sales of \$100 million or more. *See* ORS 317.090 (containing various annual minimum tax amounts for corporations with differing amounts of Oregon sales). The Attorney General’s certified caption avoids that potential confusion, while still reasonably identifying the subject matter of the measure.

C. The summary substantially complies with ORS 250.035(2)(d).

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.” The certified summary for IP 14 states:

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.

Petitioner contends that the certified summary does not comply with ORS 250.035(2)(d) for two reasons. First, he contends that the summary must tell voters that the measure would result in an increase in minimum taxes for some corporations, and a decrease for others. (Pet 5). But as petitioner acknowledges, that information is, as a general matter, already implicit in the certified summary. To the extent that he suggests that the Attorney General must include specific, numerical information about hypothetical corporations that would see an increase, or a decrease, in the minimum tax under the measure (*see* Pet 4), that is not required in the summary.¹ And it might falsely suggest to voters that the measure itself is that specific.

Second, petitioner contends that the summary is deficient because “it does not inform voters of the purpose of the minimum tax and that it only

¹ For example, petitioner includes in his proposed summary information showing that the measure would decrease taxes for businesses that have Oregon sales of “\$100,000,000 to \$101,249,999” and increase taxes for businesses that have Oregon sales “exceed[ing] \$101,250,000.” (Pet 6-7).

applies when businesses have no taxable income.” (Pet 6). But that information is outside the scope of the summary statement. As noted, the summary must tell voters only about the “measure and its major effect.” The overarching “purpose” of Oregon’s minimum tax, and the circumstances under which the minimum tax applies (as compared with other types of corporate taxes) are not necessary to summarize IP 14 and its major effect. The effect of the measure is a change to the amount of minimum tax to certain corporations, not the underlying purpose of minimum taxes, or the circumstances under which a corporation must pay them.

CONCLUSION

This court should order that the ballot title for IP 14 be certified.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General

/s/ Ryan Kahn

RYAN KAHN #002919
Assistant Attorney General
ryan.kahn@doj.state.or.us

Attorneys for Respondent
Ellen F. Rosenblum, Attorney General,
State of Oregon

OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

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

(503) 986-1518

July 15, 2013

The Honorable Ellen Rosenblum, Attorney General
Anna Joyce, Solicitor General
Dept. of Justice, Appellate Division
400 Justice Building
Salem, OR 97310

Re: Jill Gibson Odell v. Ellen Rosenblum, Attorney General, State of Oregon
Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #14. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi
Compliance Specialist

enclosures

RECEIVED
JUL 15 2013

APPELLATE DIVISION
SALEM, OR 97301

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 30, 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 prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to modifying annual minimum tax for corporations with Oregon sales of \$100 million or more.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

KIM NASU
Legal Secretary

RPK:mlk/4268140

Enclosure

Patrick Green
813 SW Alder Street, Suite 800A
Portland, Oregon 97205

DRAFT BALLOT TITLE

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.

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KATE BROWN
SECRETARY OF THE STATE

STOLL BERNE

STOLL STOLL BERNE LOKING & SHLACHTER P.C. LAWYERS

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KATE BROWN
SECRETARY OF THE STATE

June 13, 2013

Steven C. Berman
sberman@stollberne.com**VIA FACSIMILE**

Kate Brown
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310

Re: Draft Ballot Title for Initiative Petition No. 14 for the General Election of
November 4, 2014

Dear Secretary Brown:

I represent Patrick Green, Executive Director for Our Oregon, regarding the ballot title for Initiative Petition No. 14, for the General Election of November 4, 2014 ("the Initiative"). Mr. Green is an elector in the State of Oregon and the Initiative's Chief Petitioner. This letter is written in response to your office's press release, dated May 30, 2013, which invites comments on the draft ballot title for the Initiative.

It is Mr. Green's position that the caption and summary comply with the requirements of ORS 250.035(2)(a) and (d). Mr. Green respectfully submits that results statements would be statutorily compliant if modified.

I. An Overview of Initiative Petition 14

The Initiative modifies the top tax bracket for Oregon's corporate minimum tax. ORS 317.090(2)(a) sets forth the minimum annual tax a corporation must pay for the privilege of conducting business in Oregon. There are twelve tax brackets. The tax is a fixed amount within each bracket. The top tax bracket requires corporations with Oregon sales of \$100 million or more to pay a minimum tax of \$100,000. ORS 317.090(2)(a)(L). The Initiative modifies the tax for that bracket. Under the Initiative, corporations with Oregon sales of \$100 million or more would pay a minimum tax of \$75,000 plus 2% of the excess over \$100 million. The Initiative makes no other changes to Oregon law.

Kate Brown
June 13, 2013
Page 2

II. The Results Statements.

ORS 250.035(2)(b) and (c) require that the "yes" and "no" statements in a ballot title contain "simple and understandable statement[s] of not more than 25 words that describe[] the result if the state measure is" passed or rejected.

The results statements in the draft ballot title provide:

"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."

Mr. Green submits that the result of yes statement would comply with the statutory requirements if the phrase "adding additional percentage" were revised. "Adding additional" is confusing, and somewhat redundant. "Add" and "additional" are synonymous with "increase"; that could leave voters with the impression that the Initiative raises taxes for all taxpayers, when it does not. The phrase "additional percentage" in both results statements also is confusing and potentially misleading; the Initiative does not create an "additional" percentage. Under existing law, the corporate minimum tax does not contain any "percentages"; the tax owed is a set amount within each bracket. Under the Initiative, the tax on income over \$100,000 would become a set amount plus a percentage of Oregon sales over \$100 million. Finally "specified amount," while technically correct, is inexact as to this Initiative. The actual "specified amounts" should be conveyed directly to voters, rather than through a phrase that does not inform voters of those amounts.

Thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

Very truly yours,

Steven C. Berman

SCB:jjjs
cc: client



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

RECEIVED
2013 JUN 13 PM 3 57
KATE BROWN
SECRETARY OF THE STATE

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%;

Elections Division
Comments on IP #14
June 13, 2013
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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.

Elections Division
Comments on IP #14
June 13, 2013
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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.

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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.

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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.

Elections Division
Comments on IP #14
June 13, 2013
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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:

**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.

Sincerely,

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

RPK:rpk/4390605

Enclosure

June 28, 2013

Page 5

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RECEIVED

BALLOT TITLE

2013 JUN 28 PM 1 34

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

KATE BROWN
SECRETARY OF THE STATE

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.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on August 9, 2013, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 14 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Jill Gibson Odell, attorney for Dan Harmon, by using the court's electronic filing system.

I further certify that on August 9, 2013, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 14 (Supreme Court) to be served upon chief petitioner Patrick Green, by mailing a copy, with postage prepaid, in an envelope addressed to:

Patrick Green
813 SW Alder Street Ste 800A
Portland, OR 97205

/s/ Ryan Kahn

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