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Oregon Elections Division
Public Service Building Suite 126
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Salem OR 97310

Sent electronically to elections.sos@oregon.gov

RE: Explanatory Statement for Initiative Petition (IP) 17

We appreciate the opportunity to submit written comments regarding the explanatory statement for Initiative Petition 17. Please see below for the following comments and suggested revisions.

About the Smart Growth Coalition

The Smart Growth Coalition is a consortium of traded sector businesses with significant operations in Oregon. Our coalition was formed in 1999 to add technical expertise to state legislative proceedings regarding proposed reforms to state tax law affecting businesses who have made investments in jobs and capital projects in the state. Our members are unified in their commitment to sound tax policies that encourage investment in Oregon and provide technical simplicity and clarity to the state tax code.

IP 17 Rebates Likely Create Federal Tax Liability for Individuals

As a general rule, the federal government imposes tax on all income from whatever source derived. State payments to individuals are subject to the general rule unless an exemption applies to their specific circumstances. These exemptions include previously paid state taxes, certain needs-based welfare programs, and disaster relief payments.

During the COVID-19 pandemic, 22 states provided “relief” payments administered through their tax systems, raising questions and speculation over the federal tax treatment. On August 30, 2023, the Internal Revenue Service [provided guidance](#) on the tax treatment of these refunds, determining it would consider the payments as disaster relief and not include them in gross income for tax purposes. However, the payments were

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taxable under federal law if the taxpayer itemized their deductions and the amount exceeded the \$10,000 limit on the federal state and local tax deduction.

The explanatory statement suggests, “It is unknown whether some cash payments might affect federal tax liability.” This statement is incorrect according to federal law and administrative guidance, as the IP 17 rebates do not appear to qualify under any existing exemptions. There is no association between the rebates and previously paid taxes, a needs-based welfare program, or any disaster. Thus, the statement provides voters with incorrect information regarding the federal tax treatment of the rebates and **should be modified to convey that individuals are indeed likely to pay tax on such payments.**

Statement Incorrectly Suggests S Corporations Are Subject to IP 17 Minimum Tax

The explanatory statement reads, “The measure applies to “C,” “B,” and other corporations which generally pay income or excise taxes, and to “S” corporations, which generally do not directly pay corporation-level taxes.” The latter appears to be incorrect given the plain reading of the initiative and other relevant tax laws.

Under existing Oregon law, S corporations are exempt from ORS 316, 317, and 318, except for the minimum tax provided in ORS 317.090.¹ In simpler terms, an S corporation is not currently subject to the tax laws governing corporations, except for the \$150 minimum tax. The IP 17 text does not change this exemption. Additionally, and perhaps most consequently, the initiative contains no language imposing the gross receipts minimum tax on S corporations.

If the explanatory statement’s goal is to provide voters with accurate information about the effect of the measure, it must correctly describe the entities subject to the tax.

Administrative Burdens for the State and Taxpayers Must Be Acknowledged

The explanatory statement fails to recognize the immense burden the measure would place on the Oregon Department of Revenue (the “Department”) and taxpayers. If approved by voters, the Department would have roughly two weeks between the election certification and the operative date of the new tax, providing no time to hire staff, update technology, and engage stakeholders. Likewise, taxpayers would have insufficient time to create internal systems to track sales and remit payments for the tax.

After the enactment of the Corporate Activity Tax in 2019, the Department engaged in a roadshow engaging businesses, tax practitioners, and other stakeholders to raise

¹ ORS 314.762 provides, “Except as otherwise provided in ORS 314.766 (tax on build-in gain), 314.767 (tax on excess net passive income) and 317.090, an S corporation shall not be subject to the taxes imposed by ORS chapter 316, 317 or 318.”

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awareness about the new tax. If IP 17 were to become law, there would be no opportunity to engage stakeholders or establish critical tax infrastructure before the operative date.

Oregonians have a right to know the administrative burdens resulting from this measure and the explanatory committee has a responsibility to recognize the real problems with the operative date, which could undermine the rollout of the new tax program should voters pass the measure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Newgard". The signature is fluid and cursive, with a large initial "J" and "N".

Jeff Newgard
Smart Growth Coalition