
From: CUNNINGHAM Melisse S
Sent: Thursday, July 26, 2018 4:54 PM
To: ELZINGA Stephen * SOS
Cc: WOLF Steven; KRON Michael C
Subject: RE: Financial Estimate Committee Advice

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Elzinga,

You asked whether the prohibition on taxes, fees or assessments on groceries in Initiative Petition (IP) 37 would apply to the new .7 percent hospital assessment under §27 of HB 2391 (2017) or the new gas/transportation taxes enacted as part of HB 2017 (2017). Our conclusion is that the limitations of IP 37 would not apply to those assessments or taxes.

IP 37 does not appear to apply to either the new hospital assessment or the new gas tax due to two different provisions in the measure. The hospital assessment would not be affected, among other possible reasons, because it is an assessment on the hospital's net revenue. Section 27 of HB 2391 (2017) states that "an assessment of 0.7 percent is imposed on the net revenue of each hospital in this state that is not a waived hospital." (Emphasis added). IP 37 (proposed Section 16(2)(a)(B)) states that the limitations of the measure do not apply to taxes, fees or other assessments "on or measured by * * * net income of an individual or entity," so an assessment on net revenue such as the new .7 percent hospital assessment would be excluded from the measure's limits.

In addition, IP 37's limitations would not apply to the new gas tax (or other taxes) enacted as part of HB 2017 (2017), among other possible reasons, because that bill was fully "enacted" upon passage by the legislature and signing by the governor on 8-18-17, and IP 37 does not apply to taxes enacted prior to October 1, 2017. "Enact" is defined as "to establish by legal and authoritative act: make into a law; esp: to perform the last act of legislation upon (a bill) that gives the validity of law[.]" *Webster's Third New Int'l Dictionary* 745 (unabridged ed. 2002); *Am. Energy, Inc. v. City of Sisters*, 250 Or App 243, 248, 280 P3d 985, 987, rev den, 352 Or 377 (2012); see also Or Const, Art V, §15b (enrolled bill becomes law upon signing by governor, or, generally, within 5 days if not signed or returned by governor). Thus, while HB 2017 did not become "effective" until October 6, 2017 (the 91st day after the legislature adjourned), it was "enacted" prior to that date. IP 37 states it applies to "enactments relating to taxes, fees or other assessments adopted, approved, or enacted on or after October 1, 2017." So, it appears the measure would not apply to taxes that were enacted as part of HB 2017 prior to October 1, 2017.

Please let me know if you need anything further or would like to discuss this advice.

Yours,

Melisse S. Cunningham

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From: ELZINGA Stephen * SOS [mailto:Stephen.ELZINGA@oregon.gov]
Sent: Wednesday, July 25, 2018 7:10 PM
To: CUNNINGHAM Melisse S

Cc: WOLF Steven; KRON Michael C
Subject: Financial Estimate Committee Advice

Melisse,

The Financial Estimate Committee will be finalizing a statement estimating any financial impacts of Initiative Petition 37 this Friday at 11am. We would appreciate your advice on a legal question that has arisen regarding the impact of the measure. The Department of Administrative Services indicated that you provided advice to inform their financial analysis of Initiative Petition 37, which assumed that Initiative Petition 37 would not impact Measure 101 (2018) or the recently passed transportation package (HB 2017 from 2017). They would prefer not to directly share the advice they received with the Financial Estimate Committee in order to preserve attorney-client privilege, but they recommended that we reach out to you for assistance with our legal question. Can you please clarify whether Initiative Petition 37 would impact Measure 101 (2018) or the recently passed transportation package (HB 2017 from 2017)?

Thank you,
Steve



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