OREGON DEPARTMENT OF REVENUE

Testimony on SB 938 -2, -3, -4

SB 938 Introduced

The bill as introduced presents several concerns. Some of these concerns are addressed in the -2 amendment. The following list contrasts the introduced version with the -2.

- The introduced version is at the option of a county, not a county and city as provided in the -2.
- The introduced version applies the exemption to all taxes whereas the -2 applies to the adopting city or county unless they meet the 51% test.
- The introduced version has no economic development references whereas the -2 allows the city or county to place economic development conditions on the exemption.
- The introduced version does not provide for the authorizing county to notify the assessor of the exemption or the taxpayer to file an application. The -2 covers these two pieces.
- The introduced version allows the stacking of exemptions whereas the -2 prohibits it.
- The introduced version does not have claw back provisions but the -2 does.
- The introduced version allows the county to apply the exemption retroactively whereas the -2 allows the approved property to enter the exemption percent schedule where it would have fallen if it had been approved in its first year.

-2 Amendment

The -2 amendment replaces the bill. It would allow exemptions on new industrial improvements with a value between $2M and $25M. The department is neutral on the policy to the extent we understand it. These comments focus on the administration aspects of the proposal. In summary, there are a number of gaps in the process, the application sequence appears reversed, and the amendment allows exceptions but no discernible rule. The bill gives wide latitude to the cities and counties in establishing the terms of the exemption and could result in hundreds of programs across the state with no two alike.

1. Each county and each city in the county may have its own conditions and criteria. The bill does not specify what happens if both the city and county have a program. The bill should specify how this is intended to work; if counties can only grant exemptions in unincorporated areas, if the county can only grant exemptions in city limits where the city does not have their own program, or if the taxpayer may choose between either the city or county programs. If both the city and county have passed ordinances and a given taxpayer could apply to have some property in each they could in effect avoid the $25M cap. (Page 1, Lines 3 to 8)
2. It is not clear how to treat new property with a value greater than $25M (or whatever cap the county or city sets). Is the first $25M of the value exempt, or is the item not eligible? Similarly, if property value exceeds $2 million in the first year but drops below $2 million in a subsequent year does it remain qualified? (Page 1, Lines 16 to 19)
3. Each city or county can have differing percentages for exemption in the three to five year option they chose, there can be requirements for economic development criteria or not, and the local government can set the value range within which property may qualify as long as it is between $2M and $25M as specified in the bill. There is the potential for hundreds of programs with differing

criteria for the assessor and the department to administer. The applicant might have some property in a given year at 100% exempt under a county program and other property that has been in the program for the previous two years that is now at 60% exempt. Furthermore, they might have other property under a city program at differing percentages. This is not a process that the assessors or the department have in place or automated. (Page 1, Lines 9 to 19 and Page 2, Lines 16 to 20)

4. Why does the property owner submit the application to the assessor who does not know the criteria, who then rejects or approves and then forwards on to the county or city for their rejection or acceptance? Wouldn't it make more sense for the applicant to send the application first to the city or county so they can approve or reject based on criteria of their program that they established. Once they approve it then and only then should it be sent on to the assessor (by April 1). (Page 3, Lines 18 to 24)
5. The bill is missing typical claw back language, where if the taxpayer is disqualified mid way through the exemption period they must repay the tax savings they have enjoyed to that point. (Page 4, Lines 7 to 11)
6. Section 2 is unclear to our county partners as written. We interpret it to mean that if a retroactive exemption is granted in 2016 on property installed in 2013, it would start at the percentage in year three of a five year schedule but no refund would be issued for the 2014/15 and 2015/16 tax years. Clarifying language would be appreciated if possible and there should be a sunset on this retroactive provision. (Page 4, Lines 20 to 30 and Page 5, Lines 1 to 6)
7. The effective date will likely be in September. For the first year, following the city or county adoption of an ordinance or resolution, the property owner can file an application that will be late. After that the assessor must process the application and refund from taxes that were already billed, which by then will be into 2016 sometime. The bill lacks any specific late deadline.
8. This amendment creates a virtual enterprise zone (EZ) for property throughout the state, border to border. The virtual EZ is without limits as to the number of zones, lacks the statewide minimum requirements for an enterprise zone such as a first source hiring agreement, the number of jobs to be created, minimum wages requirements, requirements as to curtailed operations or claw back provisions, and the requirement that the company comply with all local Oregon and federal laws.

-3 Amendment

The -3 amendment changes the bill's introduced version by adding provisions for a task force. The task force would consider the property tax exemptions relating to nonprofit corporations.

The department believes that this is an important area of study. This is an area of conflict and litigation for county assessors, taxpayers and the department. The department would appreciate the opportunity to be a part of these discussions and we believe that having the legislature involved would be the necessary catalyst to get full engagement from the nonprofits affected.

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-4 Amendment

The -4 amendment places the entirety of SB 967 into SB 938. SB 967 is the bill that would expand the exemption for history and science museums (known as the Evergreen Bill). Additionally this amendment places a sunset of 2019 on the provisions for history and science museums. Following the hearing on SB 967 there were discussions with the sponsor on a consensus amendment that all parties could agree on. Only the first point below was added to the bill (-4 amendment).

1. Placing a sunset on the exemption. The idea here was that the larger issue of the lack of clarity to the charitable exemption statute needed to be dealt with and that it could be dealt with by having a workgroup or task force address the question of what was “charitable”.

The remaining points from that discussion that are not in this amendment include:

1. Changing the bill to make it applicable to only “aero space” museums. The idea here was that other museums are not having the same issues as Evergreen and there is no reason to change the law for all museums statewide. The reason for the high scrutiny by Yamhill County on this claim for exemption was the prolonged inappropriate use of the property by the for-profit aviation corporation. Other museums across the state are not involved with for-profit corporations in the way Del Smith chose to blend the operations and uses of the properties.
2. Change the “75%” to “90%” as this represents a more reasonable percentage departure from the use of property for other than its exempt purpose.