Oregon
Kate Brown, Governor

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HB 4027 Introduced, Sections 1 and 2 – Solar Payment in Lieu of Tax (PILoT)

HB 4027 makes changes to multiple exemption programs, including Oregon's fee in lieu of tax program for solar projects created by the legislature in HB 3492 (2015). These comments relate only to sections one and two, the solar PILoT portion of the bill.

Section 1 (1) – We appreciate that this definition clarifies that the land is included in the project, the original bill was unclear and the Department of Revenue (DOR) has been advising counties to make sure the agreements specify what is and is not included.

We are concerned that under this proposed language if a rooftop project were ever completed someone could argue that the building and land under the building is also exempt. None of these have been constructed on top of buildings to our knowledge, but we understand that it is possible and we believe clarity now could prevent a court case later.

Section 1 (2)(a) – The current concept excludes Multnomah County. The DOR is neutral but stakeholders indicated they would be looking into whether the county actually wanted to be excluded. Based on our reading of the bill, even permissive agreements would no longer be allowed in Multnomah County under the current language.

Section 1 (2)(a) – The bill changes the ability to enter into an agreement from being permissive to mandatory, this is a policy question and the DOR is neutral. Typically mandatory exemptions do not involve an agreement, just an application. Here the term is up to 20 years, we are unclear whether the local jurisdiction or the taxpayer gets to choose the term. If the county only wants to sign a 20 year agreement but the taxpayer wants a shorter term is the county still obligated to enter into the agreement? If the point is to increase flexibility for the local government language could be added that the local jurisdiction can include additional requirements as long as they do not conflict with the statute. If the point is to increase flexibility for the taxpayer the bill needs some clarification.

Section 1 (4) and (5) – The assessors have asked that the PILoT be put back into the regular property tax billing system. The current billing mechanism, which the assessors acknowledge they requested, has proven to be difficult to administer. The fee could be added to the assessment and tax roll and collected on the regular property tax statement under ORS 311.255.

The assessors have also asked that DOR calculate the payment since DOR is still valuing the projects under central assessment despite the exemption. We think DOR could calculate the fee, and the normal apportionment percentages could be applied to the dollar amount of the fee to determine the distributions (or the legislature could keep the countywide distributions in the current language). We will continue to consider issues around having the DOR do this work but as of today we feel it is possible with very little effort. The language about the taxpayer asking the assessor to calculate the fee needs to be changed to simply say DOR will

calculate the fee and taxpayer will supply the necessary information (nameplate capacity). Some taxpayers currently under the PILoT have argued that they no longer have to file annual returns under 308.520 with the DOR. We believe they are all filing now, but some clarification may still be in order because the DOR must value the property even if it is exempt.

Section 1 (6) and (7) – If the fee goes into the regular property tax system we think most of this language is unnecessary. If the payment is late then 16% delinquent interest accrues and the property starts down the path to foreclosure.

Whether the sponsors want the taxpayer to be able to cancel the agreement and pay regular property taxes is really a policy question, but the one year clawback currently in law could open the door to a bad actor. A given taxpayer could pay the fee while their property value is high, wait for depreciation to reduce the taxable value, then drop out of the agreement and pay only one year's fee as a penalty. The legislature may want to consider increasing the number of years that are clawed back or allowing the local jurisdiction to set the clawback by agreement, but again, that is a policy decision and the DOR is neutral.

One general point. We know there have been at least two cases where projects were delayed after the agreements are signed. In one case the assessor still felt the PILoT was due even though the project had not broken ground. The bill could clarify whether the fee is due if the project is not yet under construction, or under construction but not yet operating.

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