HB 4007 -2 STAFF MEASURE SUMMARY

House Committee On Revenue

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Meeting Dates: 2/22, 2/27, 2/29

WHAT THE MEASURE DOES:

Creates Oregon personal income tax subtraction for any amount received in settlement of a civil action arising from wildfire. Requires wildfire to be subject of a state of emergency declared by the Governor, occur in an area subject to executive order of the Governor invoking the Emergency Conflagration Act, or be a federally declared disaster located within Oregon or elsewhere. Disallows subtraction if amount is otherwise deducted on taxpayer's federal income tax return or allowed as a subtraction on a tax return filed in another state. Reinstates miscellaneous itemized deduction specific to legal fees incurred by a plaintiff seeking compensation through wildfire-related litigation if taxpayer claimed federal itemized deductions. Applies to losses incurred, amounts received, and legal fees deducted in tax years beginning on or after January 1, 2020.

ISSUES DISCUSSED:

- Impacts associated with 2020 Oregon wildfires
- Potential impact taxation of settlement/judgment awards could have on ability of wildfire victims to rebuild
- Treatment of punitive damage awards
- Tax treatment includes amounts dedicated to attorney fees
- Differences in deductibility of attorney fees between individuals and businesses
- Example of tax treatment of judgment/settlement
- Similar federal legislation being considered
- Distinction between a judgment and a settlement
- Personal experiences of individuals impacted by wildfire.

EFFECT OF AMENDMENT:

-2 Structured as a full replacement of measure for drafting simplicity.

Adds judgment resulting from a civil action to the type of amounts that can be subtracted. Clarifies that subtraction cannot be taken for amounts received that are compensated by insurance or otherwise. Allows subtraction for losses incurred and amounts received in tax years 2018 and 2019. Allows amended tax returns to be filed before May 15, 2025, for purpose of claiming the subtraction in tax years 2018 through 2020. Specifies subtraction is applicable for amounts received from civil action resulting from wildfires that are declared in years 2018 through 2025. Clarifies that subtraction is not allowed if any amount is taken into account in any tax year as a deduction or credit on the taxpayer's federal income tax return.

BACKGROUND:

The general rule regarding taxability of amounts received from settlement of lawsuits and other legal remedies is Internal Revenue Code (IRC) Section 61. IRC 61 states all income is taxable from whatever source derived, unless exempted by another section of the code. IRC 139 excludes from income tax, qualified disaster relief payments. IRC 104 generally excludes compensatory damages received in a lawsuit or settlement if such damages are for personal physical injuries or physical sickness. Property settlements for loss in value of property that are less than the adjusted basis of the property are not taxable and are generally not required to be reported on a taxpayer's tax return. However, taxpayers must reduce their basis in the property by the amount of the settlement. If the property settlement exceeds a taxpayer's adjusted basis in the property, the excess is generally income though exceptions exist for involuntary conversions when property is subsequently replaced. Amounts received for non-economic damages and punitive damages are generally taxable. Federal legislation in 2017 temporarily eliminated the miscellaneous itemized deduction (tax years 2018 through 2025) thereby limiting the potential tax deductibility of legal fees.