

Co-Chair McLain
Co-Chair Gorsek
Members of the Joint Committee on Transportation
Oregon State Capitol
900 Court Street NE Salem, OR

Re: HB 3362

I wish to share an experience from the past that may affect how you consider the excise tax on tires and the uses of revenue prescribed in HB 3362.

Article IX, section 3a of the Oregon Constitution restricts the use of money raised by taxes and fees on motor fuels and motor vehicles to the construction, reconstruction, operation, repair, etc. of Oregon's public highways, roads and streets. This includes "Any tax or excise levied on the ownership, operation or use of motor vehicles."

In the late 1980s, Oregon's public transportation community successfully advocated in the legislative process for a tire and battery tax to raise revenue to support public transit. The thinking at the time was that a tire or a battery was not a motor vehicle, making the use of the revenue for public transportation constitutionally permissible. The matter went to court. Ultimately, the Oregon Supreme Court ruled in a 1992 case, *AAA v. State of Oregon*, that tires and batteries were essential components of motor vehicles and tied to their use. Using the revenue for public transportation was not permissible.

HB 3362 makes two dedications of the revenue raised by its proposed excise tax on tires:

- 75% to a Tire Pollution and Rail Transit Fund with 2/3 of that going toward public transportation by rail and 1/3 toward mitigating tire pollution; and,
- 25% to the Wildlife-Vehicle Collision Reduction Fund for purposes described in ORS 366.161, the ODOT and ODFW wildlife collision prevention program.

Under the Oregon Supreme Court's interpretation that the revenue from a tax on tires is highway and road-related revenue, the use of money dedicated in the Tire Pollution and Rail Transit Fund for public transportation may not be used for that purpose.

In addition, projects to mitigate tire pollution and to prevent collisions with wildlife would be restricted to those projects within the public road rights-of-way. Wildlife advocates may be expecting broader, more flexible uses of the money.

In closing, if the Committee chooses to move HB 3362 forward as a measure raising revenue, I suggest that the bill be amended to reflect a privilege tax rather than an excise tax.

Thank you for time and attention on this matter.


Victor Dodier