

WORK SESSION ON SB 1215

PUBLIC HEARING AND WORK

SESSION ON HB 3556 A,

HJR 71 A, AND HB 2488

TAPES 185-186 A/B, 187-188 A/B

SENATE REVENUE COMMITTEE

JUNE 11, 1997 - 8:00 A.M. - HEARING ROOM B - STATE CAPITOL BUILDING

Members Present: Sen. Ken Baker, Chair (arrived 8:30 am)

Sen. Joan Dukes (arrived 8:20 am)

Sen. Verne Duncan

Sen. Tom Hartung

Sen. Randy Leonard

Members Excused: Sen. Neil Bryant, Vice Chair

Invited Testimony: Jim Manary, Department of Revenue

Scot Sideras, Presiding Magistrate, Magistrate's Division, Tax Court

Linda Burtlehaus, Department of Revenue

David Carmichael, Attorney, Eugene

Gary Marks, City Manager, City of Heppner

Tom Wendholtz, Morrow County

Ray French, Morrow County Commissioner

Paul Phillips, Former State Senator, Representing City of Gresham

Bernie Giusto, Police Chief, City of Gresham

Joe Parrott, Fire Chief, City of Gresham

Ron Pennington, Citizens Police Advisory Committee, Gresham

Rep. Randall Edwards, District 15, Portland

Rep. Patti Milne, District 38, Woodburn

Tim Nesbitt, Oregon Public Employees Union

Staff: Jim Scherzinger, Legislative Revenue Officer

Steve Meyer, Economist

Ed Waters, Economist

Carol Phillips, Committee Assistant

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TAPE 185, SIDE A

005 Sen. Hartung Opened meeting at 8:13 a.m. and started as an informational meeting because a quorum was not present.

OPENED WORK SESSION ON SB 1215

007 Scherzinger Started today's discussion of SB 1215 with Appeals to Tax Court as listed on page 2 of Exhibit A from 6/2/97. Discussed supervisory authority of the Department of Revenue ("DOR") and the Magistrate's Division of the Tax Court.

034 Jim Manary Said that the main language in Section 92 page 36 of SB 1215 addresses this subject. Last session the appeals function was moved from DOR to Magistrate's Division, a newly created area. Virtually all the hearing function was moved over in that process. Back in the 1950s the DOR was given supervisory function over whole property tax system and general powers to correct any errors thought harmful and necessary to correct. Normally there is the regular Board of Equalization process every year where taxpayers can appeal. Under new system questions go to the Magistrate. Questions and discussion interspersed.

- 097 Manary To appeal property tax questions the sequence used to be Board of Equalization, DOR, Tax Court Judge. The sequence now will be Board of Equalization, Magistrate, Tax Court Judge. Questions and discussion interspersed.
- 131 Scot Sideras Said that under ORS 306.116 there are two good reasons for missing date to make timely appeal: 1) out of country or other good reason. 2) even though time for appealing has lapsed, taxpayer can bring case before magistrate citing extraordinary circumstances. Can amend current year and previous two years for varying reasons and circumstances.
- Sideras Supervisory power has fiscal impact and will affect SB 1215. Through supervisory power, litigants are allowed to appeal tax for current and two previous years. Supervisory power is an adjudication of value. Not a bad thing, but there is a fiscal impact. Feels taxpayers would be foolish to not appeal their 1995-96 valuation. Questions and discussion interspersed.
- 229 Sideras Stated there has never been judicial determination as to what an appraisal is. Value can be changed without doing a reappraisal of property. Further questions and discussion.
- 260 Sideras Said the Tax Court is not geared up to handle many appeals. Does not believe volume of appeals will be reduced by Measure 50 in current biennium. Three to five years from now there will be a difference, but not until then. Magistrate staff has been cut. Have had appeals on amounts as low as \$11.35 or \$13.00 because taxpayers feel they have the right to be heard. Bottom line is the court has to do more with less, and they are prepared to cut to the bone. The fundamental responsibility of the court is to listen to litigants. Practical effect is that people will have to wait, possibly years, for their chance to be heard. Questions and discussion interspersed.
- 327 Chair Baker Asked if there were creative ways to handle these cases, i.e. triage to determine more serious cases.
- 343 Sideras When Magistrate's Division was established, it was agreed that the rules of evidence would not apply. The entire neighborhood of Laurelhurst was considered and processed in a single day.
- 371 Scherzinger Summarized that under Section 2 the assessor cannot change the value of the property for 1995-96 unless adjudicated by court, or an error correction, or addition of omitted property. If someone believes their 1995-96 value is too high, they have to go to court to adjudicate it. Taxpayers can use supervisory authority of Magistrate's Division to file appeal. It is at discretion of Magistrate if they want to accept cases or not. Further discussion of appeal process. Questions and discussion interspersed.

TAPE 186, SIDE A

Assessor has no power to go back and change a value from 1995-96. Now dealing with supervisory power as an extraordinary remedy which says if you did not appeal

- 021 Manary and that statute closed the year, in 1997 you can come back under this power and open both 1996 and 1995 to appeal. There may be large numbers of people going back three years to get values adjusted.
- 048 Sideras Advised Chair Baker that the supervisory power has been used considerably in the past, as many as 2,400 claims in a year. If the bill remains as written, there will be considerable fiscal consequences. Maximum magistrates they have had was ten, and currently have eight. That has now been cut in half to four because under Measure 47 property tax appeals will be eliminated, so the need for eight magistrates will be eliminated. However, Sideras cannot see how a new tax program which changes more than 300 statutes will reduce the volume of appeals. Questions and discussion interspersed.
- 090 Scherzinger Asked the last day a person could appeal for 1995-96 tax year, which was determined to be 12/31/97. Questions and discussion.
- 117 Sideras Problem is the process of exercising discretion is itself costly. Personnel must receive, log in, set up file, review, etc. and this all takes time utilizing a judicial officer exercising discretion and then making decision.
- 132 Manary Feels it is confusing in that taxpayers might not know where they should go to appeal now. This statute puts it over to Magistrate's Office and not sure if language was included to remove DOR but will check on it.
- 153 Various Questions and discussion.
- 188 Manary Added that a Supreme Court case dealt with people who felt they did not get due process at a DOR hearing. Supreme Court said that due process begins at the Tax Court level because that is the first trial and everything is informal until a case gets there. Questions and discussion interspersed.
- 238 Scherzinger Continued discussion of SB 1215 saying that appeals sections of the bill go from 77 to about 90. They generally take the law that has been applied to Measure 5 and extend it to Measure 50. Current law sets out a system where there is an exclusive remedy for determination of questions affecting the limits of Measure 50 and Measure 5. Section 78 addresses petition from ten or more taxpayers to one person because of a court decision saying it was unconstitutional to require ten. Section 81 is current provision of law applying to Measure 5 that allows a local government to ask for an advisory opinion of the Tax Court about how the measure applies to a specific tax fee or charge. This measure extends that to Measure 50. Section 84 discusses remedies when a case is decided. Section 85 permits local governments to ask for a judicial declaration on affect of Measure 50 on any tax, fee, charge, or assessment. Section 86 is a provision extended to Measure 50 in that if a court determines any part of Measure 50 or Measure 5 does not apply to a tax on property, that court can order that it be collected or imposed.

- 355 Linda Burglehaus Added there was one other change on the adjudicated value for industrial properties that are valued by the DOR to ensure that when those values are adjudicated they would not be reappraised until they would be normally scheduled.
- 389 Sen. Duncan Recessed meeting at 9:05 a.m. and reconvened at 9:35 a.m.
- 394 David Carmichael Said his expertise for the past 17 years has been in property tax appeals.
- 416 Sideras Modified his remark made earlier in testimony when he specified 12/31/97 as cutoff date to file appeal. The cutoff is actually 6/30/98. Questions and discussion.
- 464 Carmichael Stated that supervisory authority is a matter that has concerned him over the years, and he has addressed legislature in prior years. Supervisory authority has existed since 1929, i.e. the ability to correct tax year's valuation when a timely appeal was not performed. Does not believe that every taxpayer in Oregon is going to descend on the Magistrate's Division and try to change their property valuation for 1995-96 tax year.

TAPE 185, SIDE B

- 037 Carmichael Each year taxpayers have the right to file appeal with their local Board of Equalization. If taxpayers do not like the answer they get, they have the right to try the next level of appeal. In the past that has been the DOR, but now it will be the Magistrate's Office. Taxpayers need to show an error by 20%, a broker's opinion or a deed, or an appraisal on residential property. On commercial or industrial property it is even more difficult to prove valuation error.
- 067 Chair Baker Added that in his experience he does not generally see huge differences in appraisals, but it has happened occasionally.
- 071 Carmichael Agreed that it sometimes does happen. Assured Committee that supervisory authority is not a goal of every taxpayer in Oregon. Further discussion and questions interspersed.
- 151 Scherzinger Current law says the DOR has general supervisory authority, and has authority if gross error is discovered on residential property. SB 1215 leaves DOR's authority alone, but it gives Tax Court discretionary authority. If a gross error, they shall adjust it. Are adding to that a discretionary authority for good and sufficient cause.
- 191 Sideras Added that the Court announces its decisions on a case-by-case basis. Unlike administrative rule process, it differs because constantly changing issues in cases.
- 208 Scherzinger Said that Section 92 adds to gross error provision. New language gives discretion for good and sufficient cause, giving them discretion they do not have now. Questions and discussion.

- 232 Sideras Said the only rules are those defined by the Court as guided by the legislative history built by this Committee. The Court will follow specific language to the letter; broad language is open to broad interpretation.
- 287 Chair Baker Asked for difference between "good and sufficient cause" and "other reasons".
- 290 Sideras "Good and sufficient cause" means you have a good excuse for not making timely appeal (sick, out of country, etc.). "Other reasons" is difficult to define the limits of what is included, i.e. nasty surprise (appraisal totally out of line with actual property), etc. The DOR has a history of up to 2,400 appeals a year under supervisory power. Discussion and questions interspersed.
- 352 Sideras Stated there has been considerable tension between assessing authorities, the assessors, the taxpayers and tax practitioners, as to how broadly to apply the discretion. Have been criticized by being either too broad or too lenient.
- 361 Manary Added that Supervisory was devised originally to give the DOR power over the whole system and was meant as an extraordinary tool in case something happened and a case did not go to the Board and needed to be corrected. Example regarding recent merger of Polk and Marion County educational service district. In creating a new map they left off \$800,000,000 of property in West Salem. Supervisory power was used to get it back within the map boundaries. Further discussion and questions.
- 394 Carmichael Added that there has been a history with supervisory authority. There was a consolidation in 1983 of several statutes. Between 1983 and 1985 jurisdiction was not given as to gross error type cases. In 1987 the 20% test was added. Allows certain breathing holes on non-residential properties for certain extraordinary cases, which are rare. Many people qualify for a Board of Equalization appeal but not as many will qualify for supervisory appeal. Questions and discussion interspersed.

CLOSED WORK SESSION ON HB 1215

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TAPE 186, SIDE B

027 Chair Baker Recessed meeting at 10:06 a.m. and reconvened at 1:20 p.m.

OPENED PUBLIC HEARING ON SB 1215

049 Gary Marks Read Exhibit A - Written testimony.

Said the situation arises because Heppner has very high compression under Measure 5 (non-school portion) Discussed Exhibit B - Code Areas in General Compression After

- Measure 50 Cuts. Also discussed Exhibit C - Effect of Measure 50 and Measure 47 on Taxing District Operating Taxes. Heppner's situation is a Measure 50 problem, whereas all other situations are Measure 47 problems. Situation can be fixed because of mandate to mimic Measure 47 under Measure 50. Questions and discussion interspersed.
- 152 Scherzinger
- 320 Tom Wendholtz Said Morrow County took \$520,000 hit and is forced to lay off five people.
- 320 Chair Baker Said the legislature cannot solve that.
- 332 Wendholtz Continued that they would "open up a can of worms" with other communities if situation is allowed to continue. Boardman is in pretty good financial shape, Irrigon is broke and has no inner structure, the inner structure of Heppner is pretty much in place compared with other towns in the county. The county has supported Heppner with new rodeo bleachers, fair ground improvements, etc. Believes, however, that Heppner has to take their hits just like everyone else.
- 353 Marks Said that when Heppner taxpayers approved levy they decided how to distribute part of the money in their tax code area. That was a voter decision.
- 361 Chair Baker Responded that the voters later approved Measure 50 and reversed the previous levy vote.
- 364 Ray French Pointed out that while Heppner lost a library and swimming pool, the library formed their own district and is doing just fine. The swimming pool that Heppner lost was condemned anyway and no longer serviceable, but they have built a brand new one which will be open before the end of the month. Morrow County has taken a \$520,000 cut and is handing out pink slips to reduce personnel. As a county, they cannot afford to take any more hits. County Assessors will not have tax forms out by November.
- 419 Chair Baker Said the legislature cannot solve that problem for him either.
- 420 French Said he hopes the tax statements will be out by the first of 1998. Further comments on problems in the county.
- 440 Scherzinger Referred to page 22 of Exhibit C. Discussed Morrow County and Heppner City figures. Questions and discussion interspersed.

TAPE 187, SIDE A

010 Scherzinger Continued discussion of Exhibit C and Heppner compression.

Said Gresham believes it has a unique situation in that the tax base is dedicated for public safety. Although all dedicated for public safety it covers only 70% of the costs

- 064 Paul Phillips of public safety. The constitution proposes mimicking Measure 47 and making adjustments as needed with Measure 50. If the proposed adjustments are made they would still create a \$63,000 hit to the budget, but that is better than the \$1.8 million hit anticipated. Police and fire services have already been reduced. Questions and discussion interspersed.
- 103 Bernie Giusto Stated there are no other funding sources other than other General Fund sources like cigarette and alcohol tax and other general revenue. Gresham relies solely on property taxes for police and fire funding. Gresham has never reached compression. \$3.20 per \$1,000 is totally dedicated to police and fire. Have lowest ratio in state of 1.1 police officers per 1,000, population compared with Portland at 1.87 per 1,000 which is almost double what Gresham has. Questions and discussion interspersed.
- 140 Joe Parrott Historically operated as efficient, low cost operation with low staffing ratios and low cost basis. Of the nine largest fire departments in the state, Gresham is the second lowest in terms of cost and the lowest in terms of staffing. Current staffing ratio is at .65 per 1,000. Portland staffing is 1.27 per 1,000. Have always striven for innovation, efficiency, and quality of service.
- 163 Scherzinger Referred to page 23 of Exhibit C regarding Gresham figures. The Gresham situation is not so much a Measure 50 issue as a Measure 47 issue. Gresham had a \$16 million levy in 1995-96, which is the base year for Measure 47, and a levy request to incorporate it into a tax base, which failed. That \$16 million set a high base year for purposes of Measure 47. Detailed discussion of Measure 47 versus Measure 50 ramifications.
- 319 Phillips Stated that Measure 47 proposed that the reduction in taxes would be the lesser of 1994-95 or 1995-96 less 10%. Proposed implementation of the measure discussed allocation among the jurisdictions. The proportional sharing of the losses is what is putting Gresham in the position of having such a reduction. Gresham is willing to accept purest definition of 1994-95 or 1995-96 less 10% and absorb their own losses as voters approved under Measure 47. But Gresham is unwilling to distribute Gresham tax dollars to other taxing jurisdictions particularly tax dollars dedicated absolutely to public safety. Questions and discussion.
- 355 Scherzinger Stated the Committee could make whatever decision it wanted to on how to distribute loss. Tualatin has the same situation, other than the fact that there is not a dedication of funds to public safety. Questions and discussion interspersed.
- 384 Phillips Reiterated that previous proponents talk about how they did not want to hurt public safety. Questions and discussion.
- 409 Ron Pennington As an educator finds it very sad that the part-time police officer assigned to Centennial High School may have to be dropped. He is an important link between students and the city. With 1,500 students the high school has more people than the whole town of Heppner, and should not have to lose their valuable in-house police

presence. Questions and discussion.

TAPE 188, SIDE A

048 Scherzinger Both Measure 47 and Measure 50 estimates in Exhibit C are based on assumptions of draft of the SB 1215. The bill not only makes a decision about Measure 50, but it makes a decision about how Measure 47 would have been implemented. If you go back and change your assumption of what Measure 47 would have done, then you have to readjust assumption of what Measure 50 will do. That in a nutshell is the issue. Questions and discussion interspersed.

CLOSED PUBLIC HEARING ON SB 1215

OPENED PUBLIC HEARING ON HB 3556A AND HJR 71A

146 RepRandall Edwards Said what this bill attempts to do is address another aspect of school needs, and that is the ability to build and maintain school infrastructure. The Treasury Department set up a program modeled after one in Utah which allows the state to interface with local school districts to allows the school districts access to the state's credit rating to get better prices. Believes in a small way this scheme would help advance some school funding needs in a different way rather than an appropriation.

179 Rollie Wisbrock Exhibit H - Written testimony. Added that the kind of debt this would support is general obligation debt that local school districts, community colleges, and educational service districts would get approved through normal process of voter approval. It would not add new kinds of debt and is restricted to general obligation with voter approval. It is a voluntary program and school districts are not compelled to participate. Many school districts have low bond ratings, so by utilizing the AA rating of the state can get better deal and avoid bond insurance as well.

229 Sen. Dukes Asked if this bill would allow the legislature without changing the law to redirect the State School Fund into the General Fund in order to pay off a school district's debt?

231 Wisbrock Answered we do not have that ability now, but that ability would be available only if a school district defaulted on the bonds if the bill passes. Added that no school district has ever defaulted on its general bond obligations ever, including during the Depression. Bond rating agencies are comfortable with this concept. Questions and discussion interspersed.

CLOSED PUBLIC HEARING ON HB 3556A AND HJR 71A

OPENED WORK SESSION ON HJR 71A

MOVES HJR 71A TO THE SENATE FLOOR WITH DO PASS
RECOMMENDATION.

ROLL CALL VOTE: MOTION PASSES: 4 - 0 - 2

289 Sen.
Duncan

SENATORS VOTING AYE: DUKES, DUNCAN, HARTUNG, BAKER.

SENATORS ABSENT: LEONARD, BRYANT.

Sen. Duncan will carry the bill on the Senate Floor.

CLOSED WORK SESSION ON HJR 71A

OPENED WORK SESSION ON HB 3556A

MOVES HB 3556A TO THE SENATE FLOOR WITH DO PASS
RECOMMENDATION.

ROLL CALL VOTE: MOTION PASSES: 4 - 0 - 2

305 Sen.
Duncan

SENATORS VOTING AYE: DUKES, DUNCAN, HARTUNG, BAKER.

SENATORS ABSENT: LEONARD, BRYANT.

Sen. Duncan will carry the bill on the Senate Floor.

CLOSED WORK SESSION ON HB 3556A

OPENED PUBLIC HEARING ON HB 2488

Rep.
319 Patti
Milne

Stated that HB 2488 deals with medical savings accounts, and it follows up on SB 347 (the reconnect bill) that was passed earlier in this session. That bill provides for Oregonians to create medical savings accounts. It follows federal guidelines in Kennedy-Kassebaum bill in targeting small employers with 50 or fewer employees and self-employed people to be able to set up medical savings accounts. HB 2488 follows up on SB 347 by allowing another opportunity for tax advantage. Questions and discussion interspersed.

378 Ed
Waters

Stated that the program would be on first come, first served basis. Program would be monitored from time to time to see how many accounts have been opened. If 750,000 accounts have been opened, the program will not disallow any of the previously opened accounts. But additional new accounts may not be allowed.

392 Rep. Milne Stated there are still a lot of unknowns to this concept including uncertainty as to how many people would participate in the program.

413 Tim Nesbitt Exhibit O - Written testimony. OPEU opposes bill. Believes this is a disconnect, not a reconnect. An expert in Washington, DC says they do not expect participation to reach forecast. Does not believe this program meets the test of disconnecting and creating the additional administrative staff necessary. Believes it would create separate monitoring mechanism above and beyond that required for following federal. Does not believe there is a need.

472 Waters Added that the Fiscal Impact Statement indicates no expenditure impact on this bill. Only revenue impact would be if more accounts were opened in Oregon than after the federal cap had been closed.

CLOSED PUBLIC HEARING ON HB 2488

059 Chair Baker Adjourned meeting at 2:45 p.m.

Carol Phillips

Committee Assistant

Kim James

Office Manager

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Exhibit Summary:

A. SB 1215, Marks, Written testimony dated 6.11.97, 19 pages

B. SB 1215, Scherzinger, Code Areas in General Government After Measure 50 Cuts, 1 page

C. SB 1215, Scherzinger, Effect of Measure 50 and Measure 47 on Taxing District Operating Taxes, 31

pages

D. SB 1215, Scherzinger, Measure 50 Effect of Reduced Cuts for Non-Schools with High New Construction, 18 pages

E. SB 1215, Giusto, Written testimony dated 6/9/97, 1 page

F. SB 1215, Phillips, Written testimony, 1 page

G. SB 1215, Phillips, Gresham Property Taxes, 1 page

H. HJR 71A/HB 3556A, Wisbrock, Written testimony dated 6/11/97, 5 pages

I. HJR 71A, Meyer, Staff Measure Summary, 1 page

J. HJR 71A, Meyer, Revenue Impact Statement, 1 page

K. HJR 71A, Meyer, Fiscal Impact Statement, 1 page

L. HB 3556A, Meyer, Staff Measure Summary, 1 page

M. HB 3556A, Meyer, Revenue Impact Statement, 1 page

N. HB 3556A, Meyer, Fiscal Impact Assessment, 1 page

O. HB 2488, Nesbitt, Written testimony, 1 page