



Multnomah County Oregon

Board of Commissioners & Agenda

connecting citizens with information and services

BOARD OF COMMISSIONERS

Diane Linn, Chair

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-3308 FAX (503) 988-3093

Email: mult.chair@co.multnomah.or.us

Maria Rojo de Steffey, Commission Dist. 1

501 SE Hawthorne Boulevard, Suite 600
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Email: district1@co.multnomah.or.us

Serena Cruz, Commission Dist. 2

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501 SE Hawthorne Boulevard, Suite 600
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501 SE Hawthorne Boulevard, Suite 600
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SEPTEMBER 20 & 22, 2005 BOARD MEETINGS -

REVISED FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:30 a.m. Tuesday Work Session on Impact of State Funding Reductions in FY 2005-07
Pg 2	9:30 a.m. Thursday Minority Enterprise Development Week Proclamation
Pg 2	9:45 a.m. Thursday Steffanoff ITAX Hearing
Pg 3	10:15 a.m. Thursday Turja ITAX Hearing
Pg 3	11:00 a.m. Thursday Resolution Requiring Comcast Corporation to Activate the Ninth Access Channel
Pg 3	11:15 a.m. Thursday Resolution Authorizing Commissioner Rojo to Negotiate with ODOT on the Sellwood Bridge Renovation/ Replacement Project
Pg 3	11:30 a.m. Thursday Executive Session

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Television

(503) 491-7636, ext. 332 for further info

or: <http://www.mctv.org>

Tuesday, September 20, 2005 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

WORK SESSION

WS-1 Work Session to Consider Countywide Impact of State Funding Reductions in the Fiscal Year 2005-2007 Biennium. Presented by Dave Boyer, Karyne Dargan, Department Directors, Invited Others. 2 HOURS REQUESTED.

Thursday, September 22, 2005 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

REGULAR AGENDA - 9:30 AM

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

DEPARTMENT OF COUNTY HUMAN SERVICES - 9:30 AM

UC-1 PROCLAMATION Proclaiming September 2005 NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH in Multnomah County, Oregon

DEPARTMENT OF COUNTY MANAGEMENT - 9:30 AM

- R-1 PROCLAMATION Proclaiming the Week of October 3 to October 7, 2005, as MINORITY ENTERPRISE DEVELOPMENT WEEK
- R-2 NOTICE OF INTENT to Apply for Grant Funding from the Oregon Department of Environmental Quality for Waste Prevention Recycling Planning and Implementation
- R-3 PUBLIC HEARING and Board Decision of Taxpayers Denu Steffanoff and Karen Steffanoff's Appeal of the Administrator's Final Determination

Regarding their 2004 Multnomah County Income Tax (ITAX) Obligations Pursuant to ITAX Administrative Rule 11-614

- R-4 PUBLIC HEARING and Board Decision of Taxpayer Thomas A. Turja's Appeal of the Administrator's Final Determination Regarding his 2003 Multnomah County Income Tax (ITAX) Obligations Pursuant to ITAX Administrative Rule 11-614
- R-5 Approve Changes to the 2004-2006 Labor Agreement between Multnomah County and AFSCME Local 88 and Extend Contract One Year to June 30, 2007

NON-DEPARTMENTAL - 11:00 AM

- R-6 RESOLUTION Requiring Comcast Corporation to Activate the Ninth Access Channel
- R-7 RESOLUTION Authorizing Participation in a Joint City of Portland and Multnomah County Public Safety System Planning and Budget Process
- R-8 RESOLUTION Authorizing Commissioner Maria Rojo de Steffey to Negotiate on Behalf of Multnomah County with the Oregon Department of Transportation through its Oregon Innovative Partnerships Program for the Sellwood Bridge Renovation/ Replacement Project

Thursday, September 22, 2005 - 11:30 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah Building, First Floor Commissioners Conference Room 112
501 SE Hawthorne Boulevard, Portland

IF NEEDED EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(2)(h). Only Representatives of the News Media and Designated Staff are allowed to Attend. Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session. No Final Decision will be made in the Executive Session. Presented by Agnes Sowle. 15-30 MINUTES REQUESTED.



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REGULAR MEETING

REGULAR AGENDA - 9:30 AM **PUBLIC COMMENT - 9:30 AM**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

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Thursday, September 22, 2005 - 11:30 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah Building, First Floor Commissioners Conference Room 112
501 SE Hawthorne Boulevard, Portland

IF NEEDED EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(2)(h). Only Representatives of the News Media and Designated Staff are allowed to Attend. Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session. No Final Decision will be made in the Executive Session. Presented by Agnes Sowle. 15-30 MINUTES REQUESTED.

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Wednesday, September 21, 2005 8:20 AM
To: SOWLE Agnes; Diane Linn; Lisa Naito; Lonnie Roberts; Maria ROJO DE STEFFEY; Serena Cruz
Cc: Andy Smith; Carol WESSINGER; Chuck Martin; Darcy Miles; Delma FARRELL; Gary Walker; Iris BELL; Joseph BAESSLER; Judith Shiprack; Kathryn GORDON; Kristen WEST; Mary Carroll; Matt LIEUALLEN; Matthew LASHUA; Mike BEARD; Rob FUSSELL; Robert Walker; Shelli Romero; Stephen FRAME; Tara BOWEN-BIGGS; Terri Naito
Subject: Update/Changes to September 22nd Board meeting
Importance: High

There is no consent calendar; unanimous consent proclamation added (UC-1); R-4 and R-6 have been asked to be postponed and removed respectively; there *will* be an executive session – I'm guessing we will get to it by 10:40 a.m. instead of 11:30. I'm contacting the rest of the agenda item presenters to let them know to come early. Here are the appropriate suggested "scripts" for the changes. Thanks!!

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

DEB WILL LET YOU KNOW IF THERE ARE FOLKS SIGNED UP.

MAY I HAVE A MOTION FOR CONSIDERATION OF A UNANIMOUS CONSENT ITEM?

**COMMISSIONER _____ MOVES
 COMMISSIONER _____ SECONDS
 CONSIDERATION OF A UNANIMOUS CONSENT ITEM**

**ALL IN FAVOR, VOTE AYE, OPPOSED ____?
 THE MOTION FAILS
 OR
 THE CONSIDERATION IS APPROVED**

DEPARTMENT OF COUNTY HUMAN SERVICES - 9:30 AM

UC-1 PROCLAMATION Proclaiming September 2005 NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH in Multnomah County, Oregon

COMMISSIONER _____ MOVES

9/21/2005

COMMISSIONER _____ SECONDS
APPROVAL OF UC-1
SEAN DERRICKSON AND REX SURFACE EXPLANATION,
READ PROCLAMATION, RESPONSE TO QUESTIONS

OPPORTUNITY FOR PUBLIC TESTIMONY

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

THE MOTION FAILS
OR
THE PROCLAMATION IS ADOPTED

R-4 PUBLIC HEARING and Board Decision of Taxpayer Thomas A. Turja's Appeal of the Administrator's Final Determination Regarding his 2003 Multnomah County Income Tax (ITAX) Obligations Pursuant to ITAX Administrative Rule 11-614

AT THE REQUEST OF THE DEPARTMENT, MAY I HAVE A MOTION TO POSTPONE INDEFINITELY?

COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
TO POSTPONE INDEFINITELY

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

R-4 IS POSTPONED INDEFINITELY

R-6 RESOLUTION Requiring Comcast Corporation to Activate the Ninth Access Channel

AT THE REQUEST OF MHCRC, MAY I HAVE A MOTION TO POSTPONE INDEFINITELY?

COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
TO POSTPONE INDEFINITELY

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

R-6 IS POSTPONED INDEFINITELY

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

9/21/2005



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: UC-1
Est. Start Time: 9:30 AM
Date Submitted: 09/15/05

BUDGET MODIFICATION:

Agenda Title: PROCLAMATION Proclaiming September 2005, National Alcohol and Drug Addiction Recovery Month in Multnomah County, Oregon

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested:	September 15, 2005	Time Requested:	5 minutes
Department:	County Human Services	Division:	MHASD
Contact(s):	Chris Murphy, MHASD Administrative Analyst Sr.		
Phone:	503.988.3691	Ext.:	22458
I/O Address:	167/1/510		
Presenter(s):	Sean Derrickson, MHASD Addictions Program Supervisor and Rex Surface		

General Information

1. What action are you requesting from the Board?

Adoption of Proclamation Proclaiming September 2005, *National Alcohol and Drug Addiction Recovery Month* in Multnomah County, Oregon

2. Please provide sufficient background information for the Board and the public to understand this issue.

- Substance use disorders are a serious and treatable health problem, and as many as 63 percent of Americans say that addiction to alcohol or other drugs has had an impact on them at some point in their lives, whether it was the addiction of a friend or family member or another experience, such as personal addiction;
- Assessing our citizens' needs for addiction treatment and referring them to appropriate treatment-and their family members to support services- is a crucial

first step in helping people realize that recovery is possible and treatment is effective;

- c. Barriers to accessing treatment programs that can help heal lives, families, and our community are a significant problem for our neighbors, friends, co-workers, and family members with substance use disorders;
- d. Community members seeking treatment deserve affordable, individualized treatment programs; and
- e. Celebrating individuals in recovery and their families, and saluting the health care providers who helped them obtain treatment, educates our community about the benefits of treatment and affirms that such providers deserve adequate compensation for their services.

3. Explain the fiscal impact (current year and ongoing).

N/A

4. Explain any legal and/or policy issues involved.

N/A

5. Explain any citizen and/or other government participation that has or will take place.

N/A

Required Signatures

**Department/
Agency Director:**

Pat Surface

Date: 09/15/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. _

Proclaiming September 2005 National Alcohol and Drug Addiction Recovery Month in Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. Substance use disorders are a serious and treatable health problem, and as many as 63 percent of Americans say that addiction to alcohol or other drugs has had an impact on them at some point in their lives, whether it was the addiction of a friend or family member or another experience, such as personal addiction;
- b. Assessing our citizens' needs for addiction treatment and referring them to appropriate treatment- and their family members to support services- is a crucial first step in helping people realize that recovery is possible and treatment is effective;
- c. Barriers to accessing treatment programs that can help heal lives, families, and our community are a significant problem for our neighbors, friends, co-workers, and family members with substance use disorders;
- d. Community members seeking treatment deserve affordable, individualized treatment programs;
- e. Celebrating individuals in recovery and their families, and saluting the health care providers who helped them obtain treatment, educates our community about the benefits of treatment and affirms that such providers deserve adequate compensation for their services.

The Multnomah County Board of Commissioners Proclaims:

1. To help achieve this goal, the Substance Abuse and Mental Health Services Administration within the U.S. Department of Health and Human Services; the White House Office of National Drug Control Policy; and the Department of County Human Services invite all residents of Multnomah County, Oregon to participate in National Alcohol and Drug Addiction Recovery Month September 2005.
2. The month of September 2005 is proclaimed to be ***National Alcohol and Drug Addiction Recovery Month*** in Multnomah County, Oregon.

ADOPTED this 22nd day of September 2005.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, County Chair

Maria Rojo de Steffey,
Commissioner District 1

Serena Cruz,
Commissioner District 2

Lisa Naito,
Commissioner District 3

Lonnie Roberts,
Commissioner District 4

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. 05-161

Proclaiming September 2005 National Alcohol and Drug Addiction Recovery Month in Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

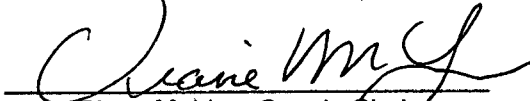
- a. Substance use disorders are a serious and treatable health problem, and as many as 63 percent of Americans say that addiction to alcohol or other drugs has had an impact on them at some point in their lives, whether it was the addiction of a friend or family member or another experience, such as personal addiction;
- b. Assessing our citizens' needs for addiction treatment and referring them to appropriate treatment- and their family members to support services- is a crucial first step in helping people realize that recovery is possible and treatment is effective;
- c. Barriers to accessing treatment programs that can help heal lives, families, and our community are a significant problem for our neighbors, friends, co-workers, and family members with substance use disorders;
- d. Community members seeking treatment deserve affordable, individualized treatment programs;
- e. Celebrating individuals in recovery and their families, and saluting the health care providers who helped them obtain treatment, educates our community about the benefits of treatment and affirms that such providers deserve adequate compensation for their services.

The Multnomah County Board of Commissioners Proclaims:

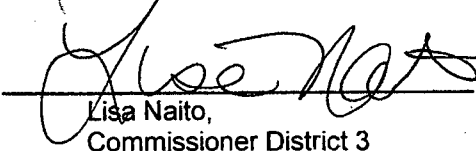
1. To help achieve this goal, the Substance Abuse and Mental Health Services Administration within the U.S. Department of Health and Human Services; the White House Office of National Drug Control Policy; and the Department of County Human Services invite all residents of Multnomah County, Oregon to participate in National Alcohol and Drug Addiction Recovery Month September 2005.
2. The month of September 2005 is proclaimed to be **National Alcohol and Drug Addiction Recovery Month** in Multnomah County, Oregon.

ADOPTED this 22nd day of September 2005.

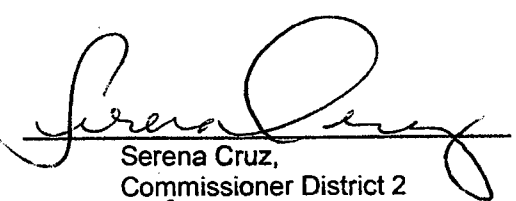
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Diane M. Linn, County Chair


Maria Rojo de Steffey,
Commissioner District 1


Lisa Naito,
Commissioner District 3




Serena Cruz,
Commissioner District 2


Lonnie Roberts,
Commissioner District 4



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-1
Est. Start Time: 9:30 AM
Date Submitted: 08/02/05

BUDGET MODIFICATION: -

Agenda Title: **PROCLAMATION Proclaiming the Week of October 3 to October 7, 2005, as Minority Enterprise Development Week in Multnomah County, Oregon**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: September 22, 2005 Time Requested: 10 minutes
Department: County Management Division: CPCA
Contact(s): Lisa Williams
Phone: 503-988-5111 Ext. 22596 I/O Address: 503/4
Presenter(s): Gail Ruben and Herman Brame

General Information

1. What action are you requesting from the Board?
Approval of Proclamation.
2. Please provide sufficient background information for the Board and the public to understand this issue.
Each year the President of the United States proclaims Minority Enterprise Development Week. Municipalities and Metropolitan areas throughout the nation plan luncheons/celebrations to honor Minority Business in conjunction with Minority Enterprise Development Week.
3. Explain the fiscal impact (current year and ongoing).
None
4. Explain any legal and/or policy issues involved.
None

5. Explain any citizen and/or other government participation that has or will take place.

None

Required Signatures

**Department/
Agency Director:**

David G. Boyer

Date: 08/03/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. _____

Proclaiming the Week of October 3 to October 7, 2005, as Minority Enterprise Development Week

The Multnomah County Board of Commissioners finds:

- a. Multnomah County's growth and prosperity depends on the full participation of all citizens at every level of our economy.
- b. Minority Americans contribute invaluablely to our County's progress and well being, and minority owned businesses have emerged as a dynamic and vital force in our County's market places, providing both employment and training for hundreds of Multnomah County residents.
- c. Multnomah County takes pride in the achievements and accomplishments of our minority business owners; we are delighted to pay them tribute for their contributions on behalf of Multnomah County's economic growth.

The Multnomah County Board of Commissioners Proclaims:

1. October 3 to October 7, 2005, as MINORITY ENTERPRISE DEVELOPMENT WEEK IN MULTNOMAH COUNTY, to thank all our minority business owners for their contributions to the County and to show our continuing commitment to the promotion of minority business opportunities.

ADOPTED this 22nd day of September, 2005

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, County Chair

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. 05-162

Proclaiming the Week of October 3 to October 7, 2005, as Minority Enterprise Development Week

The Multnomah County Board of Commissioners finds:

- a. Multnomah County's growth and prosperity depends on the full participation of all citizens at every level of our economy.
- b. Minority Americans contribute invaluable to our County's progress and well being, and minority owned businesses have emerged as a dynamic and vital force in our County's market places, providing both employment and training for hundreds of Multnomah County residents.
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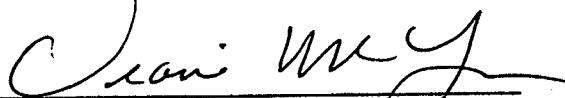
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ADOPTED this 22nd day of September, 2005



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, County Chair



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-2 DATE 09-22-05
DEBORAH L. BOGSTAD, BOARD CLERK

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-2
Est. Start Time: 9:40 AM
Date Submitted: 08/23/05

BUDGET MODIFICATION: -

NOTICE OF INTENT to Apply for Grant Funding from the Oregon
Agenda Department of Environmental Quality for Waste Prevention Recycling Planning
Title: and Implementation

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested:	<u>September 22, 2005</u>	Time Requested:	<u>5 minutes</u>
Department:	<u>County Management</u>	Division:	<u>Sustainability Initiative</u>
Contact(s):	<u>Molly Chidsey</u>		
Phone:	<u>503 988-5015</u>	Ext.	<u>27365</u>
Presenter(s):	<u>Molly Chidsey</u>		
I/O Address:	<u>503/4</u>		

General Information

1. What action are you requesting from the Board?

Approval to apply for grant funding from Oregon Department of Environmental Quality (DEQ).

2. Please provide sufficient background information for the Board and the public to understand this issue.

A proposal has been submitted to Oregon DEQ Solid Waste and Recycling to fund development and facilitation of a Waste Prevention and Recycling Plan adopted by the Board in Res. 05-102. This resolution called for development of a waste prevention and recycling plan for county facilities by the Facilities and Property Management Division and the Sustainability Initiative in cooperation with county departments. This plan is to outline actions for each department to increase recycling, reduce waste, and enable the county to meet state and regional goals while maintaining cost effectiveness. The resolution also asks that long-term goals be identified and that an annual report on progress be made to the Board of Commissioners.

This funding, if granted, would provide critical assistance to departments in identifying what actions can be taken to meet county-adopted and regional waste prevention and recycling goals. Funding

would enable departments to have direct assistance with plan development, reducing staffing needs.

3. Explain the fiscal impact (current year and ongoing).

If funded, grant funds would be received in FY 07, and the funding amount would be built in to the program offer for the Sustainability Initiative. Fiscal impact to the county would be minimal, as most of the grant funds would go towards hiring outside assistance to staff plan development and the first six months of implementation. The proposal requests funding in the amount of approximately \$16,000, this is a one year only commitment.

4. Explain any legal and/or policy issues involved.

None.

5. Explain any citizen and/or other government participation that has or will take place.

If funded, the project will be collaborative with Community Environmental Services, a non-profit organization based out of Portland State University which provides technical assistance to commercial and government facilities in the Portland area on waste reduction and recycling. Project staffing will likely include participation by graduate students who work at CES as waste and recycling specialists.

ATTACHMENT A

Grant Application/Notice of Intent

If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

- Who is the granting agency?
Oregon Department of Environmental Quality.
- Specify grant (matching, reporting and other) requirements and goals.
2005 Solid Waste/Recycling Grants are to support commercial waste prevention and recycling projects that help Oregon meet its waste generation and recovery goals. If awarded a grant, the local government will enter into a contract with DEQ and will administer the funding, oversee the project, and invoice DEQ for reimbursement. Grant recipients will file semi-annual progress and expenditure reports and must complete a final report at the end of the project.
- Explain grant funding detail – is this a one time only or long term commitment?
Grant funding will span one year (FY07). Funding will support a one-time planning project and partial implementation of agreed-upon actions. The resulting plan will be used to identify future work, some of which may be fundable under different sources.
- What are the estimated filing timelines?
Grant applications are due September 9, 2005. Eligibility for Multnomah County's application was not determined until August 18, and this NOI is being completed as soon as eligibility to apply has been confirmed.
- If a grant, what period does the grant cover?
If awarded, grant funds will be announced in mid-December, 2005, and funds be made available through awarded contract after April 2006. Funds would be available for FY 07.
- When the grant expires, what are funding plans?
Grant funding will support development of plan that identifies future actions needed. Part of the planning process will be to identify any cost impacts of future actions and if so options for funding.
- How will the county indirect, central finance and human resources and departmental overhead costs be covered?
Impacts will be minimal. Staffing support will be provided by Sustainability Team pollution prevention staff. Grant funds would help reduce County staff time required to develop the plan by providing outside services to assist with the development and implementation of the plan.

ATTACHMENT B

Required Signatures

Department/
Agency Director:

David A. Boyer

Date: 08/23/05

Budget Analyst:

Anthony

Date: 08/30/05

Department HR:

Date:

Countywide HR:

Date:



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-3
Est. Start Time: 9:45 AM
Date Submitted: 09/01/05

BUDGET MODIFICATION:

PUBLIC HEARING and Board Decision of Taxpayers Denu Steffanoff and Karen Steffanoff's Appeal of the Administrator's Final Determination
Agenda Regarding their 2004 Multnomah County Income Tax (ITAX) Obligations
Title: Pursuant to ITAX Administrative Rule 11-614

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: 09/22/05 Time Requested: 30 minutes
Department: County Management Division: Finance/ITAX Administration
Contact(s): Dave Boyer
Phone: (503) 988-3903 Ext. 83903 I/O Address: 503/531
Presenter(s): Dave Boyer

General Information

1. What action are you requesting from the Board?

Taxpayers Denu Steffanoff and Karen Steffanoff challenged the Administrator's final determination regarding their 2004 ITAX obligation, and timely notified the Administrator of their wish to appeal to the Board of County Commissioners pursuant to ITAX Administrative Rule 11-614 Appeal Rights. The Board must determine whether the taxpayers are subject to the tax, and the amount of their obligation. The Board's decision regarding the taxpayers' obligation is final.

2. Please provide sufficient background information for the Board and the public to understand this issue.

Taxpayers have the right to appeal any determination of the Administrator of the Multnomah County Income Tax by filing written protest. Denu Steffanoff and Karen Steffanoff filed such a protest, and are entitled to a hearing before the Board of County Commissioners.

3. Explain the fiscal impact (current year and ongoing).

The Administrator determined that Denu Steffanoff and Karen Steffanoff's tax obligation for 2004 is \$455.00.

4. Explain any legal and/or policy issues involved.

Denu Steffanoff and Karen Steffanoff challenge the ITAX initiative as unlawful and unconstitutional.

5. Explain any citizen and/or other government participation that has or will take place.

Denu Steffanoff and Karen Steffanoff have submitted a written statement. The Administrator has provided a written response to that statement. Denu Steffanoff and Karen Steffanoff may present relevant testimony and oral argument to the Board, and the Administrator may respond with relevant testimony and oral argument.

Required Signatures

**Department/
Agency Director:**



Date: 09/01/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

Script for ITAX Hearing

Before the Multnomah County Board of Commissioners

INTRODUCTION:

Chair: This is the time set for public hearing on the claim of **TAXPAYER NICK (DENUÉ) STEFFANOFF AND KAREN STEFFANOFF** under Administrative Rule Section 11-614 for the ITAX. I am Diane Linn, Chair of the Multnomah County Board of Commissioners. Also in attendance are Vice-Chair Lisa Naito and Commissioners Serena Cruz, Lonnie Roberts and Maria Rojo.
[Name each Commissioner]

All information relevant to your appeal may be submitted and will be considered in this hearing. The evidence may be in any form including oral and written testimony, letters, documents, case law, other written materials or other items.

The Commission will base its decision on the evidence presented, along with the information on the appeal in your file. The Board decision will be by Order adopted by the Board.

DISCLOSURES: [Any ex parte contacts or conflicts of interest should be disclosed at this time.]

Chair: I have no ex parte contacts or conflicts of interest to disclose.

or if the Chair has disclosures to make

I have the following disclosures to make: _____

Chair: Commissioner Naito? Commissioner Cruz? Commissioner Roberts? Commissioner Rojo? [If there are **none**, each Commissioner should say "**none**" on the record.]

[If there are disclosures of ex parte contacts, participants should be given an opportunity to rebut the substance of any disclosure. "Does anyone have any rebuttal testimony relating to any disclosure?"]

[If there are any disclosures of conflicts of interest, the Commissioner in question shall state whether he/she can still be fair in conducting the hearing and making a decision.]

CONDUCT OF THE HEARING:

Chair: I will ask for testimony and other evidence in the following order:

1. ITAX Staff Report
2. Appellants
3. Commission discussion, questions, deliberation
4. Future scheduling if necessary

HOW TO PRESENT TESTIMONY:

Chair: [Ask for testimony in the following order]

1. ITAX Staff report
2. Appellants

AFTER TESTIMONY:

COMMISSIONER _____ I move approval of the Order prepared by the County Attorney which is in accordance with the Final Letter of Determination as prepared by the ITAX Administrator.

COMMISSIONER _____ SECONDS

Chair: Discussion?

Chair: [after discussion] ALL IN FAVOR?

OPPOSED?

THE ORDER IS ADOPTED



Deborah Bogstad, Board Clerk
MULTNOMAH COUNTY OREGON

Multnomah County Board of Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214
(503) 988-3277 phone
(503) 988-3013 fax

September 1, 2005

Denu Steffanoff and Karen Steffanoff
2 Preakness Court
Lake Oswego, OR 97035-1405

RE: NOTICE OF HEARING ON MULTNOMAH COUNTY INCOME TAX
APPEAL [Account Numbers 26481031546 and 26481031555]

Greetings Denu and Karen Steffanoff:

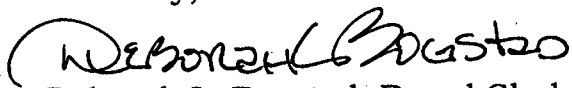
I have been directed to send you the enclosed Administrator's Response to your Multnomah County Income Tax Determination Appeal.

A hearing has been scheduled for you to present your appeal before the Multnomah County Board of Commissioners on **Thursday, September 22, 2005, at 9:45 a.m. in the first floor Commissioners Boardroom at 501 SE Hawthorne Boulevard, Portland.** At that time you may present relevant testimony and oral argument regarding your appeal. The ITAX Administrator will also be in attendance to present relevant testimony and oral argument.

The decision of the Multnomah County Board of Commissioners shall be final and no further administrative appeal shall be provided.

This Notice is provided pursuant to ITAX Administrative Rules for the Multnomah County Personal Income Tax, Section 11-614, Appeal Rights.

Sincerely,


Deborah L. Bogstad, Board Clerk
Multnomah County Commissioners

Enclosure

cc: Dave Boyer
Jacquie Weber



Department of County Management
MULTNOMAH COUNTY OREGON

David Boyer, Director/CFO
501 SE Hawthorne, Suite 531
Portland, Oregon 97214
(503) 988-3903 phone
(503) 988-3292 fax

TO: Nick Steffanoff and Karen Steffanoff
Board of County Commissioners

FROM: Dave Boyer, Administrator, Multnomah County Income Tax

DATE: September 1, 2005

SUBJECT: Staff Report: Administrator's Response in the Multnomah County Income Tax
Determination Appeal of Denué (Nick) Steffanoff and Karen Steffanoff

I. Introduction.

Mr. Steffanoff originally challenged the Administrator's determination that he is a full time resident of Multnomah County for purposes of the Multnomah County Income Tax. In his written submission dated July 16, 2005, Mr. Steffanoff apparently concedes the Administrator's determination of his residency status. However, in his July 16, 2005 written submission he raises a second issue, contending that the imposition of the county personal income tax is unconstitutional because it affects owners of Multnomah County income real estate differently, depending upon whether the owner is a Multnomah County resident, or resides outside Multnomah County.

The following is the Administrator's response to Mr. Steffanoff's written statement dated July 16, 2005.

II. The Oregon Supreme Court has upheld the authority of a home rule county to impose an income tax.

The Oregon Supreme Court upheld the authority of a home rule county to impose an income tax in *Multnomah Kennel Club v. DOR*, 295 Or 279, 666 P2d 1327 (1983). That case involved the imposition of a business income tax by the county, and the court addressed the county authority issue as follows, "even in the absence of an express statutory grant, we hold it is an implicit power of a constitutional home rule county to levy taxes." 295 Or at 284. The rationale of the court in upholding the authority of the county to impose the business income tax applies equally to a personal income tax. Although the state also imposes a personal income tax on state residents, the state has not preempted the area of personal income taxation because, "The state is deemed to have exercised its power to preempt a field only where the intent to do so is apparent." 295 Or at 286. There is no provision in ORS Chapter 316 relating to state income tax that could be construed as intent by the legislature to preempt the field of income taxation. See also *Jarvill v. City of Eugene*, 289 Or 157, 169 (1980) ("a municipal corporation may assume powers to impose taxes and to select the kind of taxes most appropriate in order to provide governmental services." Citing *Horner's Market v. Tri-County Trans.* 256 Or 124 (1970).)

III. The Multnomah County Income Tax does not violate uniformity of taxation required by Article IX Section 1 of the Oregon Constitution

Article IX Section 10 of the Oregon Constitution requires uniformity of taxation.

"The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly through the State."

The Oregon Supreme Court has interpreted this constitutional provision as a requirement that tax levied by the state be uniform throughout the state, but a tax levied by a local government (county or city) for a local purpose must be uniform throughout the county or city. *Jarvill v. Eugene*, 289 Or 157 (1980). The county income tax is imposed uniformly throughout the county at 1.25% of each resident's Multnomah Adjusted Income. All residents are subject to the tax, and residency status is determined according to the definitions set forth in the Administrative Rules.

IX. The Multnomah County Income Tax does not violate the equal protection clause of the federal constitution or the privileges and immunities clause of the state constitution.

Article I, section 32 of the Oregon Constitution requires the County to ensure that the tax is applied uniformly to all persons within the class of persons taxed. The class of citizens subject to this tax is all residents of Multnomah County. Therefore the County must apply the tax uniformly to all county residents. By treating all income equally, the County income tax is consistent with this requirement. *Wilson v. Dep't. of Revenue*, 302 Or 128, 132 (1986) ("What Article I, section 32, requires is that the tax be uniformly applied within the particular class.")

IV. Conclusion

The core of Mr. Steffanoff complaint centers on the fact that he is being taxed on income from rental properties located outside Multnomah County. He asserts a number of arguments against the tax under both the state and federal constitutions, including due process, equal protection (federal) and uniformity (state). As set out above, none of the arguments have merit.

7/19 no pmt recd.

Multnomah County Personal Income Tax
ITAX Administrator
P. O. Box 279
Portland Or. 97207-0279

ph: (503) 988-4829

July 16, 2005

re: Appeal of Final Letter of Determination June 28, 2005,

26481031546
ITAX Acct: 26481031555

Dear Administrator:

This letter is intended to initiate our written notice to appeal your "Final letter of Determination" prior to the 30 day deadline of your referenced letter.

History: Our previous letter seeking relief of June 27, 2005 was based on the Q & A page from Multnomah County ITAX website that states:

"What if I only lived in Multnomah County for part of the year?

Part-year residents will only be taxed based on the portion of the year they lived in Multnomah County. Part-year residents will only be taxed on the income they earned during the time they lived in Multnomah County. For example, a taxpayer who moved out of Multnomah County on Feb. 1 will owe the tax on roughly one-twelfth of their income."

You can see from that Q&A answer that it would be reasonable to conclude that we are entitled to the residency fraction provisions of the ITAX ordinance as we are "part year residents" given the limit of information in that website answer. We "move out"; as stated in our prior letter, for six months annually. While ORS 316.027 and associated OAR 150-319-6.027 would appear to support your interpretation of "residency" in Oregon your administration of the ITAX does not address some Constitutional issues associated with real estate lease income earned outside of Multnomah County by residents of Multnomah County. Nor does it address real estate lease income earned inside Multnomah County by residents of Multnomah County and residents of other counties.

While outside the intent and focus of this appeal the Appellant strongly recommends that this website "Q&A" question be rewritten so that additional people are not misled by what it actually attempts to describe. As written the appellant fits the description of "*Part year residents*" which only refers to "*during the time they lived in Multnomah County*" without reference to voter registration and DMV demographics. Only additional research of ORS 316.027 and associated OAR 150-319-6.027 reveals that this website description is incomplete and misleading. Our initial appeal was based on that misleading and incomplete information.

The core of this appeal revolves around several Constitutional issues on leased income producing real estate as an associated class of citizens. It also addresses the specific economic loss to the Appellant due to the devaluation of his primary asset. All owners of income real estate in Multnomah County pay Multnomah County property tax but some of these owners avoid the County income tax on their income property. The County, through its administration and construction of the ITAX ordinance, has violated certain Constitutional rights and safeguards of income real estate owners as enumerated herein.

This non-uniform taxation gives an undue economic advantage to owners residing in other counties over Multnomah County resident income property owners which becomes punitive to those Multnomah County resident Owners of Multnomah County Income Real Estate (OMCIRE). This "comparative advantage" becomes particularly onerous for Multnomah County resident OMCIRE who derive the bulk of their retirement income from income real estate within Multnomah County. Appellant is in this class of "OMCIRE" citizens.

Introduction and Claims of this appeal:

1. Denial of Due Process: The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits laws that are arbitrary, or which deprive any person of a property interest without sufficient procedural safeguards. More specifically the ITAX ordinance, by reference to ORS residency, has ignored the arbitrary nature of not taxing people who may live in Clackamas County but own income real estate in Multnomah County. It also takes leased income real estate in other counties from owners Multnomah County resident owners. Clackamas County residents of OMCIRE enjoy an immunity to the tax whereas Multnomah County OMCIRE are penalized by the ITAX for their owning income real estate for retirement income in Multnomah County. Income producing real estate is the only instance where this disparity exists due to the ITAX.

The ITAX also arbitrarily penalizes triple net lease holders of OMCIRE within Multnomah County. This arbitrary penalty manifests itself in the form of reduced income by impairing previously established contracts and obligations which are discussed in more detail later in this appeal.

2. Equal protection: Appellant is entitled to equal protection under the 14th Amendment. The Appellant is not receiving equal treatment with other owners of income real estate in Multnomah County as discussed below. Emphasis here is drawn to a US Supreme Court ruling that the Justices ruled: "this Court may invoke to invalidate ordinances by which municipal governments seek to solve their local problems."

RAILWAY EXPRESS AGENCY, INC. ET AL. v. NEW YORK,
SUPREME COURT OF THE UNITED STATES 336 U.S. 106, January
31, 1949, Decided.

(MR. JUSTICE JACKSON, concurring.)

There are two clauses of the Fourteenth Amendment which

this Court may invoke to invalidate ordinances by which municipal governments seek to solve their local problems. One says that no state shall "deprive any person of life, liberty, or property, without due process of law." The other declares that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

(MR. JUSTICE JACKSON continues:)

"The equal protection clause ceases to assure either equality or protection if it is avoided by any conceivable difference that can be pointed out between those bound and those left free. This Court has often announced the principle that the differentiation must have an appropriate relation to the object of the legislation or ordinance."

Multnomah County enacted the County Income Tax to "solve their local problem" with school funding. As demonstrated in the balance of this appeal the Appellant has been given unequal protection under the laws of Oregon by "impairing the obligation of a contract" under Oregon real estate law and pursuant to Article I Section 21 of the Oregon Constitution. (See below)

This appeal document will also show that the ITAX fails to make "*the differentiation must have an appropriate relation to the object of the legislation or ordinance*".

The differences cited in Jackson's opinion between those "*bound and left free*" are addressed in the balance of this appeal. It will be shown in this appeal that out-of-county resident OMCIRE are "*those left free*" in regard to the Multnomah County resident owners of OMCIRE "*who are bound*". Also Fiehe v. R.E. Householder Co., 125 So. 2, 7 (Fla. 1929).

Oregon Constitutional arguments:

3. Article I Section 32. Taxes and duties; uniformity of taxation. "No tax or duty shall be imposed without the consent of the people or their representatives in the Legislative Assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax." [Constitution of 1859; Amendment proposed by H.J.R. 16, 1917, and adopted by the people June 4, 1917]

a. The class of OMCIRE are entitled to "all taxation shall be uniform on the same class of subjects within the territorial limits" under Article I Section 32 of the Oregon Constitution. Clackamas County residents with OMCIRE do not pay the ITAX even though they are "subjects within the territorial limits" of Multnomah county regarding their commercial real estate interest being subject to Multnomah County property tax, COP Business License Tax, and all the various laws of Multnomah County excepting the ITAX. This constitutes taxation that is non-uniform and therefore violates Art I Sec 32. Also see Mayor of Baltimore vs. Scharf, 54 Md. 499, 519 (1880).

b. The ITAX grants unequal non-uniform taxation by allowing some, but not all, OMCIRE a reduction in the fair market value of their real estate by enactment and enforcement of the ITAX ordinance. This non-uniform taxation stems from the increased costs inherent in the ITAX as OMCIRE owned by Multnomah County residents where no such ITAX cost exists for similar for OMCIRE owned by Clackamas County residents. Also Kazubowski v. Kazubowski, 45 405, 259.

c. Appellant also owns retirement income real estate in Clackamas County which is also taxed under the arbitrary terms of the ITAX of Multnomah County. Again the arguments leveled at the competitive disadvantage and devaluation of Appellant's property relative to like properties in Clackamas County apply. [State v. Green, 232 S.W.2d 897, 903 (Mo. 1950)] I.e. Clackamas County residents do not pay the ITAX on their income real estate in Clackamas County. This places the Appellant's property at a competitive disadvantage in Clackamas County not just Multnomah County. This devaluation of Appellant's property(s) occurs both within and without the "the territorial limits of the authority (Multnomah County) levying the tax".

4. Article III, Section 11 of the Oregon Constitution prohibits the Legislative branch from delegating authority to determine whether a law applies without "*providing a standard to constrain discretion*". In this case Multnomah County has constrained discretion arbitrarily without regard to the common class of owners of income real estate within and without the County regardless of county of residence.

a. The essential intent behind ITAX was to tax the personal incomes of broad economic activity within the County including wages, investments, and all personal income. A *privilege* and *immunity* was created by not adopting a standard to "constrain discretion" between non-Multnomah County resident owners of OMCIRE. Pettit v. Penn., La.App., 180 So.2d 66, 69.

b. Out of state owners of OMCIRE are exempt from the ITAX since they are not residents of Multnomah County. Again, the ITAX grants unequal and non-uniform taxation by not adopting a standard to "constrain discretion" between non-Multnomah County resident OMCIRE and residents of Multnomah County. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 - 879, 883.

5. Article I, Section 20 of the Oregon Constitution prohibits any law that grants "*to any citizen or class of citizens privileges, or immunities, which upon the same terms shall not equally belong to all citizens.*" The ITAX as constructed and administered violates Article I and Section 20 in the following ways:

a. The class of OMCIRE are penalized for owning income real estate if they are residents of Multnomah County, while Clackamas County residents with income real estate in Multnomah County are not taxed. This creates "*privileges*" and "*immunities*" within this class of citizens. Clackamas residents owning income real estate in Multnomah County are *immune* and *privileged* while that same class of income real estate owners are penalized by the ITAX if they are Multnomah County residents.

b. The ITAX ordinance, as constructed and administered, is arbitrary and fails to recognize the *privileges* and *immunities* created under this tax. It is arbitrary, under Article I, Section 20, in that it arbitrarily treats owners of income real estate in Multnomah County preferentially depending on the owner's county of residence without regard to sources of income and contractual obligations inherent in income producing real estate both within and without Multnomah County. (See Section 6. Economic Consequences)

c. The ITAX grants unequal *privileges* and *immunities* by creating some, but not all, owners of OMCIRE a reduction in the fair market value of their real estate by enactment and enforcement of the ITAX ordinance. These unequal privileges stem from the increased costs inherent in the ITAX from the income real estate in Multnomah owned by Multnomah County residents where no such ITAX cost exists for similar OMCIRE for Clackamas County residents. Kulko v. Superior Court, 436 U.S. 84 (1978). (See item 6.)

d. Argument "c." applies in reverse as well. I.e. Multnomah residents owning Clackamas County income producing real estate are taxed on their income from that Clackamas County real estate whereas Clackamas county residents are not so taxed. The result is the creation of a 'privilege' and 'immunity' for Clackamas County residents owning income real estate in either or both counties. Argument "c." above applies again and creates an additional *immunity* that "*shall not equally belong to all citizens.*" as provided in Article I Section 20. This class of Clackamas County and Multnomah County OMCIRE are the same regardless of county of residence.

e. Non-Multnomah County residents gain a *privileged* position by being afforded all the benefits of public services for the Multnomah County income real estate that Multnomah county residents receive but without paying the proportionate ITAX. While this tax is presumably restricted to school funding it can still be seen that a commercial income property, such as a convenience store, will benefit from the ITAX funding which could conceivably be pivotal in keeping the neighborhood school and resultant customer base intact. This reinforces the granting of prohibited acts "to any citizen or class of citizens privileges, or *immunities*, which upon the same terms shall not equally belong to all citizens." under Article I Section 20.

f. This common class of citizens owning commercial/income producing real estate in Multnomah County, regardless of county of Residence, share at least 13 common citizen obligations and benefits. That is, their real property derives the same benefit of public services, (fire protection, police, parks, street lighting, school, etc), as 'entitlements' from the obligation of real estate taxes. These obligations include, but are not limited to, paying the following property taxes regardless of county of residence:

- 1.) Multnomah County ESD
- 2.) Portland Community College
- 3.) Portland School District #1
- 4.) Port of Portland
- 5.) City of Portland
- 6.) Metro
- 7.) City of Portland Child Loc Op
- 8.) City of Portland Parks Loc Op
- 9.) Mult Co. Library Local Opt Tax
- 10.) Portland Fire/Police Pension
- 11.) Urban Renewal - Portland
- 12.) Metro and Multnomah County Bonds
- 13.) Tri-Met, Portland Community College and PSD #1 Bonds

In addition these OMCIRE, regardless of county of residence, also pay the City of Portland Business License Tax on their commercial real estate income. Multnomah County, in linking OMCIRE to the financing of school funding, violated Article I Section 21. concerning ex-post facto laws; "*laws impairing contracts*" by exempting out-of-county OMCIRE from the ITAX. This created an unequal protection under the law as cited above by impairing the contract between the Appellant and out-of-County OMCIRE. The only way the class of OMCIRE can be distinguished is now by those OMCIRE that live outside Multnomah County and are not subject to the ITAX. I.e. The ITAX fractured the longstanding class of OMCIRE. Prior to this exemption created by ITAX all other tax on income producing real estate was uniform including the City of Portland Business Tax levied on out of county residents. Article I Section 21 is quoted below:

Article I Section 21. "Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors. No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor

shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats,.....”

g. The ITAX as administered, violates Appellant's rights under Article I Section 21. of the Oregon Constitution: "*impairing the obligation of contracts*" in the following ways:

h. Appellant's long standing triple net lease on his OMCIRE was signed prior to the adoption of the ITAX and Lessee agreed to pay property tax, insurance, and maintenance as a "NNN" (triple net) lease. This ITAX is an ex-post facto law that impairs Appellant's/Lessor's ability to recover the cost of the ITAX from the Lessee. This ITAX has been inserted mid-term in the Appellant's lease with no recourse to recover said ITAX costs from Lessee.

i. Said ITAX cost puts Appellant's property at a competitive disadvantage with similar OMCIRE (triple net leased commercial property). This disadvantage is created as a result of the inconsistent County tax policy in regard to the prior COP Business License Tax which does not create favor with out-of-Multnomah County residents. The ITAX is the first tax in Multnomah County on income producing real estate to "impair the obligation of contracts" as prohibited under Article I Section 21.

j. Said competitive disadvantage devalues Appellant's OMCIRE asset through the conventional "return on investment" analysis due to the higher cost inherent in the ex-post facto ITAX relative to non-resident OMCIRE. (see economic analysis below in item 6.) There is no comparable devaluation of assets for wage earners, interest earners or dividend recipients subject to the ITAX.

6. Economic Consequences of ITAX: The essential intent behind ITAX was to tax the personal incomes of broad economic activity within the County including wages, investments, and all personal income. It un-intentionally created a *privilege* and *immunity* by not creating a standard to "*constrain discretion*" between non-Multnomah County resident owners of income real estate. The bulk of County revenue derived from income taxed under ITAX is wages and actual earned income as opposed to interest, dividends, or lease income. Appellant's income is derived 90% from lease income from income producing real estate both within and without Multnomah County. Appellant has suffered a loss in his primary assets as a result of the arbitrary nature of the ITAX. The specific way and amount of this loss is calculated as follows:

Income producing real estate's value is determined by capitalizing, or "capping", the current "cap" rate of that income to determine a market value. This has been for scores of years and continues to be expressed as "dividing the net income by the cap rate to determine the market value of the real estate. Purchasers and sellers use this "cap" rate as a method of determining purchase or selling price. The current "cap" rate for like property's to Appellant's office building is 7%. Given these factual real estate principles and practices the current ITAX extracted from the Appellant yields the following calculation.....

\$455.00 ITAX divided by .07 = \$6,500.00

This \$6,500.00 is \$6,500 less value in the commercial property because it reduces the net income to the owner by \$455. Therefore a triple net leased property that produces \$30,000 per year in net income now only produces $\$30,000 - \$455.00 = \$29,545$ in net income. Verifying the above calculation of market value based on capping the income at the current 7% yields:

Before ITAX net income = \$30,000
Capping this \$30,000 @ 7% = \$428,571.41 Market Value

After ITAX net income = $\$30,000 - \$455 = \$29,545$
Capping this \$29,545 @ 7% = \$422,071.42 Market Value

\$428,571.41 Market Value (before ITAX)
\$422,071.42 Market Value (after ITAX)
\$ 6,500.00 difference in Market Value

As can be seen from this analysis the Appellant has suffered a \$6,500 decrease in his primary asset as the direct result of the County reducing the net income from his triple net lease through the imposition of the ITAX. These numbers are factual and apply to the Appellant's specific triple net leased property in the City of Portland. No such loss of asset is accrued to wage earners or other earned income earners. This same reduction in asset value occurs on income real estate owned in other counties as a result of the ITAX for those owners who reside in Multnomah County. It was not the spirit nor the intent of the ITAX to devalue Multnomah County residents' real estate values both within and without Multnomah County.

For the County to continue to consciously administer the ITAX against a select class of citizens within its territorial limits when it has been shown to lower their primary assets is not in the public interest.

7. Entitlement to Representation: The Appellant has, over the last two years, attempted to negotiate a sale of his OMCIRE only to discover that while interest rates are favorable the County ITAX has reduced his market value by \$6,500 through administering the ITAX. Rather than attempt to recover this \$6,500 from the County the Appellant has elected to seek relief from and a refund of the \$455.00 ITAX paid each year. (less the out-of-school-district refund.) The County could make this refund by acknowledging that the Appellant had the 'entitlement to representation' given by the County in its website Q&A regarding "*part year residents*" referenced previously in this appeal. I.e. Appellant was entitled to believe that representation regarding '*part year residency*' and is not obligated to research State law to verify its accuracy.

All OMCIRE pay the City of Portland Business License Tax regardless of their county of residence. I.e. Residents of Clackamas County who are OMCIRE pay the City of Portland Business License Tax on the income from their OMCIRE which is essentially another real estate tax. Appellant pays the City of Portland Business License Tax on his OMCIRE lease income. Since all like leased commercial properties in the City of Portland are in the same competitive market all owners in that market pay the same taxes except now the ITAX has impaired Appellant's lease agreement by increasing Appellant's tax obligations and associated leasing costs which reduces Appellant's asset value. (See item 6. above.)

For the reasons stated above Appellant requests the appeal be granted and that Appellant be relieved of paying the ITAX on Appellant's income derived from real estate in both Multnomah County and Clackamas County and that all said taxes paid to date be refunded to Appellant. In

the alternative Appellant requests the County, if it elects to retain the Appellant's ITAX, reimburse Appellant \$6,500 for loss in value during the two year period that Appellant attempted to sell his OMCIRE.

Appellant has previously included payment of the alleged balance of \$290.00 under separate cover as requested on the payment form attached to your referenced "Letter of Final Determination" and subsequent billing of July 1, 2005. Appellant forwarded that payment to Multnomah County in good faith and without prejudice so that in the event Appellant's appeal is not granted there will be no penalties or interest incurred. That payment was not made with any consent that the tax is due.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Steffanoff", with a long, sweeping horizontal line extending to the right.

Nick Steffanoff - Appellant
2 Preakness Court
Lake Oswego Or. 97035-1405

**Multnomah County Personal Income Tax
ITAX Administrator**
PO Box 279
Portland, OR 97207-0279
503-988-ITAX (4829)
www.multcotax.org



June 28, 2005

Final Letter of Determination

The ITAX Administrator has reviewed your protest under the provisions of ITAX Administrative Rule § 11-614(A) and has denied your protest and issues this Final Letter of Determination.

Based on the evidence submitted, the Administrator has determined that you are a Multnomah County resident for the 2004 tax year as defined in § 11-605 and subject to the ITAX under § 11-625.

Residency is determined by your primary state of residence. Temporary absence from your primary residence does not constitute part-year residency. You are using your Lake Oswego address as your permanent mailing address. In addition, you are registered to vote as Multnomah County residents and you use your Multnomah County residence for DMV purposes. You also file your Oregon income tax returns as full-year residents.

You have 30 days from the date of this letter to pay this billing or to file a written notice of appeal. If you file a written notice of appeal within the 30 days allowed by the administrative rules, you must then file a written statement with the facts and legal issues relating to your appeal to the Multnomah County Board of Commissioners within 90 days from the date of this letter.

You may refer to "Your Right to Appeal" for information regarding the content of this statement or call the Help Desk at (503) 988 – ITAX (4829) for any clarification.

✂ DETACH AND RETURN WITH PAYMENT



MULTNOMAH COUNTY ITAX
PO BOX 279
PORTLAND, OR 97207-0279

ACCOUNT #	DUE DATE	PMT DUE
26481031546		
26481031555	7/28/05	\$455.00

TAX YEAR 2004

*Please make your check payable to Multnomah County ITAX.
Please do not include any other correspondence with your payment.
Payments due on weekends or holidays must be received the previous business day.
Postmark is not receipt.*

AMOUNT ENCLOSED
\$

DENUE STEFFANOFF & KAREN STEFFANOFF
2 PREAKNESS CT
LAKE OSWEGO OR 97035-1405

MULTNOMAH COUNTY ITAX
PO BOX 279
PORTLAND, OR 97207-0279

Administrator shall have the authority, after notice, to require verification of taxpayer information in order to carry out the provisions of this subchapter.

§ 11-611 Deficiencies and Refunds.

Deficiencies may be assessed and refunds granted any time within the period provided under ORS 314.410, 314.415, and 317.950. The Administrator may by agreement with the taxpayer extend such time periods to the same extent as provided by statute.

§ 11-612 Changes to Federal or State Tax Returns.

- (A) If a taxpayer's reported net income under applicable state laws imposing a tax on or measured by income is changed by the Federal Internal Revenue Service or the Oregon Department of Revenue, or amended by the taxpayer to correct an error in the original federal or state return, a report of such change shall be filed with the Administrator within 60 days after the date of the notice of the final determination of change or after an amended return is filed with the federal or state agencies. The report shall be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.
- (B) The Administrator may assess deficiencies and grant refunds resulting from changes to federal, state or business income tax returns within the time periods provided for in § 11-611 of this subchapter, treating the report of change in federal, state or business income tax returns as the filing of an amended tax return.
- (C) The Administrator may assess penalties and interest on the additional tax due as provided in §§ 11-623 and 11-624 of this subchapter or may refuse to grant a refund of taxes as a result of the amended return if the amended return is not filed with the Administrator within the time limits set forth in division (A) of this section.

§ 11-613 Settlement Offers and Agreements

The Administrator may, upon good and sufficient cause make settlement agreements with taxpayers in the recomputation of taxes payable or in the collection thereof. Such agreements shall be consistent with ORS §§ 305.150 and 305.155 and corresponding OARs. Applications for settlement offers will be provided by the Administrator to taxpayers proposing settlement offers.

§ 11-614 Appeal Rights.

- (A) Any determination of the Administrator may be protested by the taxpayer. Written notice of the protest must be received by the Administrator or designee within 30 days after the notice of determination was mailed or delivered to the taxpayer. The protest shall state the name and address of the taxpayer and an explanation of the grounds for the protest. The Administrator shall respond within 30 days after the protest is filed with the Administrator with either a revised determination or a final determination. The Administrator's determination shall include the reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator, for good cause. Requests for extensions of time must be received prior to the expiration of the original 30 day protest deadline. Written notice shall be given to the taxpayer if the Administrator's deadline is extended.

ITAX

- (B) Any final determination by the Administrator may be appealed by the taxpayer to the Multnomah County Board of Commissioners. Written notice of the appeal must be received by the Administrator within 30 days after the final determination was mailed or delivered to the appellant. The notice of appeal shall state the name and address of the appellant and include a copy of the final determination.
 - (C) Within 90 days after the final determination was mailed or delivered to the tax filer, the appellant shall file with the Multnomah County Board of Commissioners a written statement containing:
 - (1) The reasons the Administrator's determination is incorrect; and
 - (2) What the correct determination should be.
- Failure to file such a written statement within the time permitted shall be deemed a waiver of any objections, and the appeal shall be dismissed.
- (D) Within 150 days after the final determination was mailed or delivered to the taxpayer, the Administrator shall file with the Multnomah County Board of Commissioners a written response to the appellant's statement. A copy of the Administrator's response shall be promptly mailed to the address provided by the appellant.
 - (E) The appellant shall be given not less than 7 days prior written notice of the hearing date and location. The appellant and the Administrator shall have the opportunity to present relevant testimony and oral argument.
 - (F) The decision of the Multnomah County Board of Commissioners shall be final and no further administrative appeal shall be provided.

§ 11-615 Individuals Required to File Tax Returns

- (A) Every resident of Multnomah County who is required to file an Oregon income tax return for the taxable year is required to file an ITAX return.

Nothing contained in this section shall preclude the Administrator from requiring any individual to file a return when, in the judgment of the Administrator, a return should be filed.

- (B) The return to be filed shall be a one page Form MC TR. The Administrator will release the form to the public by December 15th of the taxable year. Substitute forms (such as created by tax software) shall be accepted provided the forms include identical information in comparable format as provided on Form MC TR.
 - (1) Unless requested by the Administrator, no copy of the federal or state of Oregon return is required to be filed with Form MC TR. If ITAX has been withheld from wages, a copy of Form W-2 is required to be filed with the ITAX return unless otherwise notified by the Administrator.
- (C) A husband and wife shall make a joint return with respect to the ITAX even though one of the spouses has neither gross income nor deductions, except that:
 - (1) No joint return shall be made if the spouses are not permitted to file a joint Oregon income tax return.

All notes on 26481031546 as of 7/21/05:

7/11/04 - Account issued a double taxation refund on 7/9/2004, check number 11011236, in the amount of \$320.68

6/16/05 - AN ADJUSTED BALANCE DUE LETTER WAS SENT TO TAXPAYER ON 6/16/2005.

6/28/05 - P116 LETTER WAS CREATED ON 6/28/2005 BY LCJULIE.

6/28/05 - Rec'd correspondence from tp's stating that they are only partyr residents since they spend half the year in CA. However, they still use OR for voting, DMV and file full-yr OR rtn. Sent Final Letter of Det saying they are not part-yr residents. Also indicated that they would be amending 03 MCTR as part-yr. THAT REFUND SHOULD BE DENIED.

7/1/05 - BILLING LETTER FOR TY 2004 WAS CREATED ON 7/1/2005 BY NIGHTLY BILLING JOB.

7/8/05 - idver-tp rec'd p116 and p8. confused as to what he shd pay. while xferring to julie, tp hung up. so, as per julie, ADV TP TO PAY TAX ONLY, and req pen waiver in writing w/ pmnt. julie will se about waiving pen.

7/11/05 - chk 3412 for 290 submitted prior to 7/15 - need to reallocate PR at 5pct. fwd'd to supervisor. will fwd to MF for add'l p waiver upon completion

7/13/05 - Okay to waive full 2004 penalty per Satish.

7/13/05 - RECEIVABLE ID# 76078 MARKED AS PAID BY LCJULIE ON 7/13/2005.

7/21/05 - Rec'd 8-page constitutional appeal - forwarded directly to Satish and MC attorney.

7/21/05 - RECEIVABLE ID# 76078 MARKED AS PAID BY LCJULIE ON 7/21/2005.

I-Tax

Account Search

New Tax Doc

Individual Acct Summary

Employer Acct Summary

Letters

Account Summary

SSN: 541-44-6639 First Name: DENUE MI: Last Name: STEFFANOFF Show Account # (no dashes): 26481031546

Street #: 2 Dir: Street Name: PREAKNESS Type: CT Post Dir: Lookup Account: Exit: Create Account: Refresh: Save Changes: Letter: Save Credit Rpt:

Unit Type: Unit #: City: LAKE OSWEGO State: OR Postal Code: 97035 Plus 4: 1405

Home Phone: (503)675-0463 POE: POE Phone: Status: School District Credit Created On: 8/3/2004

Account Rep: JOANNE PARKER Acct Rep Phone: (503)823-1967

Reporting Periods/Mailing Address	Payments	Documents
Notes	Correspondence	Receivable Summary

Create Date	Created By	Type	Req'd Response	Response Due	Resp. Rep.
7/1/2005	ADMIN	System billed	Contact after date	8/1/2005	JOANNE PARKER
BILLING LETTER FOR TY 2004 WAS CREATED ON 7/1/2005 BY NIGHTLY BILLING JOB.					
6/28/2005	LCJULIE	espondence from	NA/Unknown		
Rec'd correspondence from tp's stating that they are only partyr residents since they spend half the year in CA. However, they still use OR for voting, DMV and file full-yr OR rtn. Sent Final Letter of Det saying they are not part-yr					
6/28/2005	LCJULIE	inal Determination	Contact after date	6/28/2005	
P116 LETTER WAS CREATED ON 6/28/2005 BY LCJULIE.					

Multnomah County Board of Commissioners
501 S. E. Hawthorne Blvd Suite 600
Portland Or. 97214

ph: (503) 988-3277

September 22, 2005

re: ITAX Acct: 26481031555 appeal

Dear Commissioners:

Introduction. I am a retired person (Social Security and Medicare) who was born in Portland, finished grade school and High School in Portland, finished College at the University of Oregon and had a business career in Portland until 1993. I purchased Portland area real estate as the basic income source for my retirement plan/trust. I voted for the ITAX and as a long term Portlander feel the obligation to pay for our public services via the tax structure. I did not realize that the County would tax me twice on my real estate lease in Multnomah County. Taxed once under ITAX and taxed again under MCBIT.

This appeal is not intended to challenge the legality of the ITAX but rather request relief in the manner in which it is administered. My original appeal outlined how the ITAX, as administered, is unequal for a small select group of Multnomah County residents. The staff's response to my appeal materials does not address the issues I raised but rather cites basic case history. None of the cases cited in the staff response addressed the issues raised in my appeal.

Using the staff's numbering in their September 1, 2005 response I submit the following:

Staff item I. I have no argument with the staff's response and acknowledge that, as written, the County ordinance definition of residency clearly defines my status as a County resident. The County website, however, is misleading as outlined in my July 16, 2005 appeal document.

Staff item II. None of the three court cases cited by staff address the constitutional issues raised by my appeal. Nor do these cases address the issue of double taxing of real property by way of both the County ITAX and the County's MCBIT and diminishing the value of the associated income real estate.

Staff item III. Staff asserts that the Multnomah County ITAX does not violate the uniformity of taxation per Article IX Section I of the Oregon Constitution and cites an Oregon Supreme Court ruling to support that assertion. The Oregon Supreme Court ruled that tax levied has to be uniform throughout the County. The ITAX does not tax uniformly in that it taxes real property income on Multnomah County real estate differently depending on the owner's county of residency. I.e. Not all Multnomah County real property is taxed uniformly. Staff's cited *Jarvill v. Eugene*, 289 Or 157 (1980) but that case does not address this issue of taxing real property uniformly.

Multnomah County imposes a business income tax (MCBIT) on real property uniformly regardless of the owner's residency in the County. This is a uniform taxation on all business income in Multnomah County. But when it comes to taxing the personal income from real property the County confines that taxation to only the residents within Multnomah County. This is inconsistent tax policy and penalizes owners of income producing real estate who happen to live in Multnomah County. Owners of Multnomah County income producing real estate who reside outside of Multnomah County do not pay this ITAX on their real estate income. I pay both ITAX and MCBIT on my real estate retirement income.

Multnomah County residents who rely on income producing real estate in Multnomah County suffer a "double taxation" as a result of paying both ITAX and MCBIT. The City of Portland Bureau of licenses records show that there are approximately 250 Multnomah County residents that are taxed on their real estate income/leases under MCBIT out of the 40,000 licensees administered by the City. This is only six-tenths of one percent (.6%) of the total licensees whose only "business" is holding a real estate lease. I am one of these 250 people.

Staff Item IX. Staff observes that Article I, section 32 of the Oregon Constitution requires the County to ensure that the tax is applied uniformly to all persons within the class of persons taxed. But the staff ignores that all owners of Multnomah County real estate are a "class of persons" regardless of county of residence. For example, the County currently offers a 3% discount on property taxes if paid by November 15 to all owners of Multnomah County real property regardless of county of residence. The County also recognizes this class of Multnomah County real property owners by giving an ITAX credit for those County residents who live outside the Portland School District. The County has used appropriate discretion in the taxing of real property by using this "out of school district credit" for the common class of persons owning County real property regardless of county of residence. This "out of school district credit" is a logical and credible discretionary policy adopted by the County. Owners of Multnomah County Real Property is a well established class of persons.

Due to real property owner's varying county residency their Multnomah County real property is being taxed differently under ITAX. The County ITAX ordinance did not anticipate this small niche (approximately 250 owners) of real property owners being taxed non-uniformly. The ITAX ordinance's intent was to tax personal income, not to duplicate the MCBIT which already taxes real property income as business income. I.e. Clackamas County residents who own income producing real estate in Multnomah County pay MCBIT but not ITAX. As staff observes: "*What Article I, section 32 requires is that the tax be uniformly applied within the particular class.*" The class of Multnomah County real property owners is not being taxed uniformly. I submitted documentation as to how the ITAX tax diminishes the value of my primary real estate asset by \$6,500.00 (Six Thousand Five Hundred Dollars). Staff has not addressed this decrease in asset value due to the ITAX nor addressed any discretionary action as a solution.

Staff's citation of *Wilson v. Dep't. of Revenue*, 302 Or 128 (1986) does not address this double taxation and inconsistent tax policy on real property in Multnomah County.

Staff Item IV. Staff interpreted the "core" of my appeal to center on being taxed on income from rental properties outside Multnomah County. This was not the intent of my appeal. I acknowledge that the ITAX should apply to sources of income outside of Multnomah County.

My intent was to appeal the double taxation of my real property in Multnomah County, point out the inconsistent tax policy when viewed in relationship to MCBIT, and to demonstrate the loss in value of my primary income asset (\$6,500) due to the ITAX. I.e. I pay the MCBIT "business license tax", despite not being "in business" and depending on my real estate lease for my retirement income and pay the personal income tax under ITAX on this same real estate income.

Conclusion: I am requesting that the Board find that the taxing of my real estate under both ITAX and MCBIT is unique and inconsistent tax policy and that, as administered, my ITAX should be reduced by the amount I paid under the County's MCBIT similar to the ITAX credit given to people who live outside of the Portland School District. This would resolve the \$6,500 reduction in value of my primary income asset as a result of the ITAX.



Deborah Bogstad, Board Clerk

MULTNOMAH COUNTY OREGON

Multnomah County Board of Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214
(503) 988-3277 phone
(503) 988-3013 fax

August 3, 2005

Denue Steffanoff and Karen Steffanoff
2 Preakness Court
Lake Oswego, OR 97035-1405

RE: MULTNOMAH COUNTY INCOME TAX APPEAL
Account Numbers 26481031546 and 26481031555

Dear Mr. Steffanoff:

Thank you for your quick response to my July 29, 2005 Notice of Hearing.

I shared your letter with the appropriate staff and have been instructed to advise you that the **Thursday, August 18, 2005 hearing before the Multnomah County Board of Commissioners has been cancelled.**

The appropriate staff will respond to your questions in the near future.

Sincerely,

Deborah L. Bogstad, Board Clerk
Multnomah County Commissioners

cc: Dave Boyer
Jacquie Weber

BOGSTAD Deborah L

From: NATH Satish S
Sent: Wednesday, August 03, 2005 8:43 AM
To: BOGSTAD Deborah L; MACE-MCLATCHIE Amy; WEBER Jacquie A
Cc: BOYER Dave A
Subject: RE: ITAX Appellant Mr. Steffanoff - request for information/clarification

Yes - Jacquie and I will respond to his letter...next week.

Thanks.

Satish Nath
 Finance Budget & Tax
satishwar.s.nath@co.multnomah.or.us
 Ph: (503) 988-3432

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Wednesday, August 03, 2005 8:28 AM
To: MACE-MCLATCHIE Amy; WEBER Jacquie A
Cc: BOYER Dave A; NATH Satish S
Subject: RE: ITAX Appellant Mr. Steffanoff - request for information/clarification

Will do, but is someone going to respond to him about his requests for "staff" response to his appeal document?

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: MACE-MCLATCHIE Amy
Sent: Wednesday, August 03, 2005 8:20 AM
To: BOGSTAD Deborah L; WEBER Jacquie A
Cc: BOYER Dave A; NATH Satish S
Subject: RE: ITAX Appellant Mr. Steffanoff - request for information/clarification

Deb,

Thanks! I spoke with Agnes and Satish. They said postpone it. If he wants until 9/28/05 – give it to him.

Thank you!
 Amy

-----Original Message-----

8/3/2005

From: BOGSTAD Deborah L
Sent: Wednesday, August 03, 2005 7:31 AM
To: MACE-MCLATCHIE Amy; WEBER Jacquie A
Cc: BOYER Dave A
Subject: RE: ITAX Appellant Mr. Steffanoff - request for information/clarification

Sorry about that. I rescanned it but I'll also bring a copy down to you right now.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: MACE-MCLATCHIE Amy
Sent: Wednesday, August 03, 2005 7:19 AM
To: BOGSTAD Deborah L; WEBER Jacquie A
Cc: BOYER Dave A
Subject: RE: ITAX Appellant Mr. Steffanoff - request for information/clarification

Deb,

I can't read the pdf file. Let me know if you want me to come up and get a copy. I will talk to Satish about it.

Thanks,
Amy

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Tuesday, August 02, 2005 4:53 PM
To: WEBER Jacquie A; MACE-MCLATCHIE Amy
Cc: BOYER Dave A
Subject: ITAX Appellant Mr. Steffanoff - request for information/clarification
Importance: High

Help! I received the attached fax earlier this afternoon in response to the notice of hearing scheduled for August 18, 2005. Mr. Steffanoff has many questions I am not able to answer. Since Jacquie is on vacation this week, I think I should postpone the August 18th appeal hearing as Mr. Steffanoff has suggested. Thanks for your assistance!

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587

8/3/2005

(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
http://www.co.multnomah.or.us/cc/index.shtml

8/3/2005

Deborah L. Bogstad, Board Clerk
Multnomah County Commissioners
501 S. E. Hawthorne Blvd. suite 600
Portland Or. 97214

ph: (503) 988-3277 fax: 503 988-3013

August 2, 2005

re: your Notice of Hearing July 29, 2005, ITAX Acct: 26481031555

I received your referenced letter notifying me of the August 18, 2005 Appeal Hearing but have questions about the process. The process seems out of order according to the correspondence in my file.

On June 27, 2005 I sent you a letter taking exception to the way in which the ITAX had been administered in relation to my residency and school district. You responded on June 28, 2005 with a "Final letter of Determination" denying my 'protest' and informed me that I had 30 days to file an appeal. It seems your office made a premature "Final Determination" before receiving my appeal.

On July 16, 2005 I filed an eight page appeal document with your department citing various ordinance, court cases and Constitutional issues. Your June 28 letter also references: *"If you file a written notice of appeal within the 30 days allowed by the administrative rules, you must then file a written statement with the facts and legal issues relating to your appeal to the Multnomah County Board of County Commissioners within 90 days from the date of this letter."* I submitted my appeal on July 16, 2005 within the 30 day limit and included the *"facts and legal issues relating to your (my) appeal"* in attempt to shorten the time frame of the 90 days cited in your final letter of determination.

The 30 and 90 days limit, as written, is not totally clear but I am obviously well within the limits specified. The 30 and 90 day limit looks like a two-step process. My understanding is that an appellant can file a notice of appeal, as I did on June 27, 2005, and then have an additional 60 days from your Final Letter of Determination to prepare the appeal (my July 16, 2005 appeal document). Is this correct?

If so, do I not have the balance of the 60 extra days to perfect my appeal? The staff's issuance of a notice of the appeal hearing for August 28, 2005 seems to have collapsed the ordinance mandated 90 day appeal period. It was my understanding that I have until September 28, 2005 to perfect my appeal. Is this correct?

I then received your referenced July 29, 2005 Notice of Hearing letter stating that I may present relevant testimony and oral argument regarding my appeal. Apparently your hearing notice letter was prepared without reviewing the *"facts and legal issues relating to your (my) appeal"* since I received no response to date. I find it difficult to prepare for "testimony and oral argument" without having received any response from the Bureau staff regarding the basis of my appeal cited in my July 29, 2005 appeal letter. I.e. I have no Bureau response to my July 29 appeal so it is impossible to prepare oral or written arguments.

At this point it would appear that the lack of response from the Bureau, to my July 29 appeal document, constitutes tacit Bureau agreement or acceptance of the facts and legal issues I have presented. (I doubt that the Bureau agrees with all the facts and cases I have presented.) My experience in such hearings is that both the appellant and the jurisdiction are in to be possession of a complete record concerning the issues prior to conducting the hearing(s).

The purpose of a staff report or recommendation to the appeal board, to my understanding, is so that both the appellant and the jurisdiction know what issues are to be debated so that both sides are "reading on the same page" so to speak. At this point the Bureau has given me no indication of what issues are not contested and which issues are to be debated with the Appeal Board. I.e. Does the Bureau agree that I am entitled to Equal Protection under the 14th Amendment, that I have been denied Due Process, or that the Bureau has failed to comply with Art I Sec. 32 of the Oregon Constitution regarding uniformity of taxation as alleged in my appeal? Until such a response is prepared by the Bureau it would seem that I will be acting at a severe disadvantage because I will have no time to prepare arguments in response to the Bureau's report prior to August 18, 2005.

Therefore, by way of this letter, I am perfecting my appeal by notifying the Administrator that the Administrator's determination is incorrect by virtue of his failure to address the facts, court cases and Constitutional issues raised in my July 16, 2005 appeal document and;

That the correct determination should be that my appeal should be granted based on the facts, cases, and Constitutional issues submitted in my July 16, 2005 appeal.

At your discretion it may be advisable to postpone the August 18, 2005 Appeal Hearing until after I have received a staff response/report concerning the issues I raised in my referenced appeal document of July 16, 2005.

Please advise.



Nick Steffanoff - Appellant
2 Preakness Court
Lake Oswego Or. 97035-1405



Deborah Bogstad, Board Clerk

MULTNOMAH COUNTY OREGON

Multnomah County Board of Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214
(503) 988-3277 phone
(503) 988-3013 fax

July 29, 2005

Denue Steffanoff and Karen Steffanoff
2 Preakness Court
Lake Oswego, OR 97035-1405

RE: NOTICE OF HEARING ON MULTNOMAH COUNTY INCOME TAX
APPEAL [Account Numbers 26481031546 and 26481031555]

Greetings Denue and Karen Steffanoff:

You filed a Notice of Appeal from the Final Letter of
Determination regarding your 2004 Multnomah County Income Tax.

A hearing has been scheduled for you to present your appeal
before the Multnomah County Board of Commissioners on **Thursday,
August 18, 2005, at 10:30 a.m. in the first floor Commissioners
Boardroom at 501 SE Hawthorne Boulevard, Portland.** At that
time you may present relevant testimony and oral argument regarding
your appeal. The ITAX Administrator will also be in attendance to
present relevant testimony and oral argument.

The decision of the Multnomah County Board of Commissioners
shall be final and no further administrative appeal shall be provided.

This Notice is provided pursuant to ITAX Administrative Rules
for the Multnomah County Personal Income Tax, Section 11-614,
Appeal Rights.

Sincerely,

Deborah L. Bogstad, Board Clerk
Multnomah County Commissioners

cc: Dave Boyer
Jacquie Weber



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-4
Est. Start Time: 10:15 AM
Date Submitted: 09/01/05

BUDGET MODIFICATION: -

Agenda Title: **PUBLIC HEARING and Board Decision of Taxpayer Thomas A. Turja's Appeal of the Administrator's Final Determination Regarding his 2003 Multnomah County Income Tax (ITAX) Obligations Pursuant to ITAX Administrative Rule 11-614**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: September 22, 2005 **Time Requested:** 30 mins
Department: County Management **Division:** Finance/ITAX Administration
Contact(s): Dave Boyer
Phone: (503) 988-3903 **Ext.** 83903 **I/O Address:** 503/531
Presenter(s): Dave Boyer

General Information

1. What action are you requesting from the Board?

Taxpayers James B. Pham and Thomas A. Turja challenged the Administrator's final determination regarding their 2003 ITAX obligation, and timely notified the Administrator of their wish to appeal to the Board of County Commissioners pursuant to ITAX Administrative Rule 11-614 Appeal Rights. In each case, the Board must determine whether the taxpayer is subject to the tax, and the amount of their obligation. The Board's decision regarding the taxpayer's obligation is final.

2. Please provide sufficient background information for the Board and the public to understand this issue.

Taxpayers have the right to appeal any determination of the Administrator of the Multnomah County Income Tax by filing written protest. James B. Pham and Thomas A. Turja each filed such a protest, and are entitled to a hearing before the Board of County Commissioners.

3. Explain the fiscal impact (current year and ongoing).

The Administrator determined that Thomas Turja's tax obligation for 2003 is \$238.36.

The Administrator determined that James Pham's tax obligation for 2003 is \$163.04.

4. Explain any legal and/or policy issues involved.

Both Mr. Turja and Mr. Pham challenge the ITAX initiative as unlawful and unconstitutional.

5. Explain any citizen and/or other government participation that has or will take place.

Mr. Turja and Mr. Pham have submitted written statements. The Administrator has provided a written response to those statements. Mr. Turja and Mr. Pham may present relevant testimony and oral argument to the Board, and the Administrator may respond with relevant testimony and oral argument.

Required Signatures

**Department/
Agency Director:**



Date: 09/01/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BOGSTAD Deborah L

From: Tom Turja [tturja@msn.com]
Sent: Thursday, September 22, 2005 11:29 AM
To: BOGSTAD Deborah L
Cc: WEBER Jacquie A; DA; SOWLE Agnes
Subject: Re: Hearing Postponement

Deborah,

Once I receive my documents that have been requested. I can be available any Thursday. My only requirement is that all five Commissioners to be in attendance that session.

Thank you,

Tom

----- Original Message -----

From: BOGSTAD Deborah L
To: Tom Turja
Cc: WEBER Jacquie A ; DA ; SOWLE Agnes
Sent: Monday, September 19, 2005 5:09 PM
Subject: RE: Hearing Postponement

Mr. Turja, please be patient, the Board has only heard one ITAX appeal so far. The script you refer to was prepared to assist the Chair and Commissioners in the hearing procedure. An order has not been prepared on your case. The actual Board motion following an ITAX hearing, yours or anyone else's will be:

**CHAIR LINN/PRESIDING OFFICER FOLLOWS
 ATTORNEY PREPARED ITAX HEARING SCRIPT**

FOLLOWING HEARING:

**COMMISSIONER _____ MOVES
 COMMISSIONER _____ SECONDS
ORDER APPROVING OR DENYING APPEAL OF ITAX
 ADMINISTRATOR'S FINAL DETERMINATION**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
 OR
 THE ORDER IS ADOPTED**

9/22/2005

After the hearing and Board vote, the County Attorney's Office will prepare the appropriate order and I will obtain Chair Linn's signature place a control number on it and send a copy to you.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: Tom Turja [mailto:tturja@msn.com]
Sent: Monday, September 19, 2005 4:33 PM
To: BOGSTAD Deborah L
Cc: WEBER Jacquie A; DA; SOWLE Agnes
Subject: Re: Hearing Postponement

Deborah,

I have attached a copy of the ITAX Commissioner Hearing Script included in my package materials on the county web-site.
Please explain the following, so I understand.

- 1) Page 1, Paragraph 3 states: The Board decision will be by Order adopted by the Board.

Please explain what this means and I request a copy of the Order that was adopted by the Board.

- 2) Page 2, under AFTER TESTIMONY. Commissioner_____ I move approval of the order prepared by the County Attorney which is in accordance with the Final Determination as prepared by the ITAX Administrator.

I have not received any copy of the Order prepared by the County Attorney which is in accordance with the Final Determination. Why? I should have the right to this before any hearing.

My concern is that the Commission already has their minds made up and will not be just calling balls and strikes on this issue. I'm so sorry about all these requests. But please understand, I need to know all the rules beforehand, so I can prepare an appropriate testimony.

Thank you all in advance,

Tom Turja

9/22/2005

----- Original Message -----

From: BOGSTAD Deborah L

To: Tom Turja

Cc: WEBER Jacquie A ; DA ; SOWLE Agnes

Sent: Monday, September 19, 2005 2:08 PM

Subject: RE: Hearing Postponement

This is to acknowledge receipt of your e-mail Mr. Turja. Either my supervisor County Attorney Agnes Sowle or Ms. Weber will direct me on this matter. Ms. Weber is out of the office today, so it may be tomorrow before you get a response to your request for postponement. Meanwhile, thank you for the heads up. Take care.

Deb Bogstad, Board Clerk

Multnomah County Commissioners

501 SE Hawthorne Boulevard, Suite 600

Portland, Oregon 97214-3587

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(503) 988-3013 fax

deborah.l.bogstad@co.multnomah.or.us

<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: Tom Turja [mailto:tturja@msn.com]

Sent: Monday, September 19, 2005 12:13 PM

To: BOGSTAD Deborah L

Cc: WEBER Jacquie A; DA

Subject: Hearing Postponement

Deborah,

I'm sorry to inform you of this, however my hearing this Thursday will have to be postponed one more time.

The public documents I asked for are insufficient. I need to reconcile my requests before I'll agree to a hearing.

I have been straight forward with my request for public documents. In fact, your reply was the only one I received this last week that satisfied my request. I thank you for that.

Please understand, I must protect my position to feel fairly treated.

Thank you for understanding.

Tom Turja

cc: Jacquie Weber
Michael Schrunk

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Wednesday, September 21, 2005 7:48 AM
To: 'Tom Turja'
Cc: SOWLE Agnes; WEBER Jacquie A; BOYER Dave A
Subject: RE: Hearing Postponement
Importance: High

Mr. Turja in response to your September 19th email, I have been directed to advise you and the Board that the Public Hearing on your appeal of the Administrator's Final Determination Regarding your 2003 ITAX obligations scheduled for Thursday, September 22, 2005 will be postponed. To preclude further emails regarding your hearing postponement request, the Board Rules (Resolution 05-101 attached) requires specific action by the Board when they get to your agenda item (R-4) tomorrow as follows:

- A. The Chair, each Commissioner, the Sheriff, the District Attorney, the Auditor and Department Directors may place matters on a Board meeting agenda. **The official who places a matter on a Board agenda may withdraw or postpone the matter at any time before the start of the meeting. If the agenda has been distributed, the Board must decide to continue the matter to another date or postpone it indefinitely.**

Since it will not be determined when your hearing will be rescheduled by tomorrow's Board meeting, the Board will be asked to "postpone indefinitely" (as they did when your hearing was published on a previous agenda). This is a parliamentary procedure which allows the Board to dispose of an agenda item without the prejudice of a yes or no vote. I read the agenda title into the record, then the following happens:

COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
TO POSTPONE INDEFINITELY

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

R-4 IS POSTPONED INDEFINITELY

Thereafter, the Department Director may reschedule your hearing on a future agenda.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
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deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

9/21/2005

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 2:08 PM
To: 'Tom Turja'
Cc: WEBER Jacquie A; DA; SOWLE Agnes
Subject: RE: Hearing Postponement

This is to acknowledge receipt of your e-mail Mr. Turja. Either my supervisor County Attorney Agnes Sowle or Ms. Weber will direct me on this matter. Ms. Weber is out of the office today, so it may be tomorrow before you get a response to your request for postponement. Meanwhile, thank you for the heads up. Take care.

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-----Original Message-----

From: Tom Turja [mailto:tturja@msn.com]
Sent: Monday, September 19, 2005 12:13 PM
To: BOGSTAD Deborah L
Cc: WEBER Jacquie A; DA
Subject: Hearing Postponement

Deborah,

I'm sorry to inform you of this, however my hearing this Thursday will have to be postponed one more time.
The public documents I asked for are insufficient. I need to reconcile my requests before I'll agree to a hearing.

I have been straight forward with my request for public documents. In fact, your reply was the only one I received this last week that satisfied my request. I thank you for that.

Please understand, I must protect my position to feel fairly treated.

Thank you for understanding.

Tom Turja

cc: Jacquie Weber
Michael Schrunk

9/21/2005

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 9:33 AM
To: WEBER Jacquie A
Subject: FW: Multnomah County Minutes

Jacquie, just wanted to let you know that Mr. Turja is a-okay on his question/request for minutes on the "non-departmental" items on the August 18th Board meeting agenda.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
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<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: Tom Turja [<mailto:tturja@msn.com>]
Sent: Thursday, September 15, 2005 11:51 PM
To: BOGSTAD Deborah L
Subject: Re: Multnomah County Minutes

Thank you Deborah,

I just didn't understand why there was no discussion on some items.

Tom

----- Original Message -----

From: BOGSTAD Deborah L
To: Tom Turja
Sent: Thursday, September 15, 2005 4:07 PM
Subject: RE: Multnomah County Minutes

Oh. On "c" or consent calendar items, there is no Board discussion, just one motion, one second, and a vote to approve all of them. Regular meeting agendas include a consent calendar for approval of items determined routine by the Chair. The consent calendar may be approved by a single motion, second and vote of the Board. Those items include:

- Appointments to Board and Commissions
- Auto Wrecker License Renewals
- Chaplains Housing Allowance Resolutions
- Contract Amendments
- Intergovernmental Agreements, Renewals and Amendments
- Liquor License Applications

- Peace Officer Custody Holds Orders
- Tax Title Resolutions
- Transfers of Unclaimed Property Resolutions

Here are the minutes for that portion of the agenda – Commissioner Naito wasn't present when the rest of the Board voted on the consent calendar. I am attaching the informational documentation for these five items. If you need anything more, please let me know.

ANNOTATED MINUTES

Thursday, August 18, 2005 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

Chair Diane Linn convened the meeting at 9:31 a.m., with Commissioners Serena Cruz, Lonnie Roberts and Maria Rojo de Steffey present, and Vice-Chair Lisa Naito arriving at 9:33 a.m.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER ROBERTS, SECONDED BY COMMISSIONER CRUZ, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-5) WAS APPROVED, WITH COMMISSIONERS CRUZ, ROBERTS, ROJO AND LINN VOTING AYE.

NON-DEPARTMENTAL

C-1 Appointment of Andrea Cano to the MT HOOD CABLE REGULATORY COMMISSION

SHERIFF'S OFFICE

C-2 Government Revenue Contract (190 Agreement) 0405123 to Provide Law Enforcement Services and Patrols within the City of Maywood Park

DEPARTMENT OF COMMUNITY SERVICES

C-3 RESOLUTION Authorizing the Private Sale of a Tax Foreclosed Property to SCHOOL DISTRICT NO 1

RESOLUTION 05-147

DEPARTMENT OF HEALTH

- C-4 Renewal/Amendment 1 to Intergovernmental Revenue Agreement 0410533 (110052-1)
Designating Health Department as Regional Lead Agency for Hospital and Health
System Emergency Preparedness

DEPARTMENT OF COUNTY MANAGEMENT

- C-5 Amendment 12 to Contract 4600000998 with MW Consulting Engineers to Provide
Additional Services for the Detention Electronics Upgrade Project at the Justice Center

Deb Bogstad, Board Clerk
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<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: Tom Turja [mailto:tturja@msn.com]
Sent: Thursday, September 15, 2005 2:34 PM
To: BOGSTAD Deborah L
Subject: Re: Multnomah County Minutes

Thank you for getting back to me.
Those were the August 18th "c" items Non-Departmental only.

Tom

----- Original Message -----

From: [BOGSTAD Deborah L](#)
To: tturja@msn.com
Sent: Thursday, September 15, 2005 7:45 AM
Subject: Multnomah County Minutes

Mr. Turja, Jacquie Weber advised me you want a copy of recent Board Meeting minutes, but I misplaced my note as to which meeting date. Will you please let me know the date or the topic? Thank you. I apologize for any inconvenience.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600

9/19/2005

Portland, Oregon 97214-3587
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9/19/2005

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 2:09 PM
To: BOGSTAD Deborah L
Subject: FW: Hearing Postponement

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 2:08 PM
To: 'Tom Turja'
Cc: WEBER Jacquie A; DA; SOWLE Agnes
Subject: RE: Hearing Postponement

This is to acknowledge receipt of your e-mail Mr. Turja. Either my supervisor County Attorney Agnes Sowle or Ms. Weber will direct me on this matter. Ms. Weber is out of the office today, so it may be tomorrow before you get a response to your request for postponement. Meanwhile, thank you for the heads up. Take care.

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9/19/2005

Tom Turja

cc: Jacquie Weber
Michael Schrunk

9/19/2005

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 5:10 PM
To: BOGSTAD Deborah L
Subject: FW: Hearing Postponement
Importance: High

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Monday, September 19, 2005 5:09 PM
To: 'Tom Turja'
Cc: WEBER Jacquie A; DA; SOWLE Agnes
Subject: RE: Hearing Postponement
Importance: High

Mr. Turja, please be patient, the Board has only heard one ITAX appeal so far. The script you refer to was prepared to assist the Chair and Commissioners in the hearing procedure. An order has not been prepared on your case. The actual Board motion following an ITAX hearing, yours or anyone else's will be:

***CHAIR LINN/PRESIDING OFFICER FOLLOWS ATTORNEY
 PREPARED ITAX HEARING SCRIPT***

FOLLOWING HEARING:

***COMMISSIONER _____ MOVES
 COMMISSIONER _____ SECONDS
ORDER APPROVING OR DENYING APPEAL OF ITAX
 ADMINISTRATOR'S FINAL DETERMINATION***

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

***THE MOTION FAILS
 OR
 THE ORDER IS ADOPTED***

After the hearing and Board vote, the County Attorney's Office will prepare the appropriate order and I will obtain Chair Linn's signature place a control number on it and send a copy to you.

Deb Bogstad, Board Clerk

9/19/2005

Multnomah County Commissioners
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Please explain what this means and I request a copy of the Order that was adopted by the Board.

2) Page 2, under AFTER TESTIMONY. Commissioner_____ I move approval of the order prepared by the County Attorney which is in accordance with the Final Determination as prepared by the ITAX Administrator.

I have not received any copy of the Order prepared by the County Attorney which is in accordance with the Final Determination. Why? I should have the right to this before any hearing.

My concern is that the Commission already has their minds made up and will not be just calling balls and strikes on this issue. I'm so sorry about all these requests. But please understand, I need to know all the rules beforehand, so I can prepare an appropriate testimony.

Thank you all in advance,

Tom Turja

----- Original Message -----

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9/19/2005

office today, so it may be tomorrow before you get a response to your request for postponement. Meanwhile, thank you for the heads up. Take care.

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Thank you for understanding.

Tom Turja

cc: Jacquie Weber
Michael Schrunk

9/19/2005

Script for ITAX Hearing

Before the Multnomah County Board of Commissioners

INTRODUCTION:

Chair: This is the time set for public hearing on the claim of **TAXPAYER THOMAS TURJA** under Administrative Rule Section 11-614 for the ITAX. I am Diane Linn, Chair of the Multnomah County Board of Commissioners. Also in attendance are Vice-Chair Lisa Naito and Commissioners Serena Cruz, Lonnie Roberts and Maria Rojo. [Name each Commissioner]

All information relevant to your appeal may be submitted and will be considered in this hearing. The evidence may be in any form including oral and written testimony, letters, documents, case law, other written materials or other items.

The Commission will base its decision on the evidence presented, along with the information on the appeal in your file. The Board decision will be by Order adopted by the Board.

DISCLOSURES: [Any ex parte contacts or conflicts of interest should be disclosed at this time.]

Chair: I have no ex parte contacts or conflicts of interest to disclose.

or if the Chair has disclosures to make

I have the following disclosures to make: _____

Chair: Commissioner Naito? Commissioner Cruz? Commissioner Roberts? Commissioner Rojo? [If there are *none*, each Commissioner should say "*none*" on the record.]

[If there are disclosures of ex parte contacts, participants should be given an opportunity to rebut the substance of any disclosure. "Does anyone have any rebuttal testimony relating to any disclosure?"]

[If there are any disclosures of conflicts of interest, the Commissioner in question shall state whether he/she can still be fair in conducting the hearing and making a decision.]

CONDUCT OF THE HEARING:

Chair: I will ask for testimony and other evidence in the following order:

1. ITAX Staff Report
2. Appellants
3. Commission discussion, questions, deliberation
4. Future scheduling if necessary

HOW TO PRESENT TESTIMONY:

Chair: [Ask for testimony in the following order]

1. ITAX Staff report
2. Appellants

AFTER TESTIMONY:

COMMISSIONER _____ I move approval of the Order prepared by the County Attorney which is in accordance with the Final Letter of Determination as prepared by the ITAX Administrator.

COMMISSIONER _____ SECONDS

Chair: Discussion?

Chair: [after discussion] ALL IN FAVOR?

OPPOSED?

THE ORDER IS ADOPTED



Deborah Bogstad, Board Clerk
MULTNOMAH COUNTY OREGON

Multnomah County Board of Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214
(503) 988-3277 phone
(503) 988-3013 fax

September 1, 2005

Thomas A. Turja
9124 North Wall
Portland, OR 97203

RE: NOTICE OF HEARING ON MULTNOMAH COUNTY INCOME TAX
APPEAL [Account Number 26483777387]

Greetings Mr. Turja:

I have been directed to send you the enclosed Administrator's Response to your Multnomah County Income Tax Determination Appeal.

A hearing has been scheduled for you to present your appeal before the Multnomah County Board of Commissioners on **Thursday, September 22, 2005, at 10:15 a.m. in the first floor Commissioners Boardroom at 501 SE Hawthorne Boulevard, Portland.** At that time you may present relevant testimony and oral argument regarding your appeal. The ITAX Administrator will also be in attendance to present relevant testimony and oral argument.

The decision of the Multnomah County Board of Commissioners shall be final and no further administrative appeal shall be provided.

This Notice is provided pursuant to ITAX Administrative Rules for the Multnomah County Personal Income Tax, Section 11-614, Appeal Rights.

Sincerely,

Deborah L. Bogstad, Board Clerk
Multnomah County Commissioners

Enclosure

cc: Dave Boyer
Jacquie Weber



Department of County Management
MULTNOMAH COUNTY OREGON

David Boyer, Director/CFO
501 SE Hawthorne, Suite 531
Portland, Oregon 97214
(503) 988-3903 phone
(503) 988-3292 fax

TO: Thomas Turja
Board of County Commissioners

FROM: Dave Boyer, Administrator, Multnomah County Income Tax

DATE: September 8, 2005 (Corrected from September 1, 2005 Submission)

SUBJECT: Staff Report: Administrator's Response in the Multnomah County Income Tax Determination Appeal of Thomas Turja

I. Introduction.

Mr. Turja challenges the County's imposition of the ITAX, contending that the imposition of the tax is unconstitutional because PERS retirement income is exempted from the income tax, as is federal retirement income. The following is the Administrator's response to Mr. Turja written statement filed with the Board on June 17, 2005.

II. The Oregon Supreme Court has upheld the authority of a home rule county to impose an income tax.

The Oregon Supreme Court has upheld the authority of a home rule county to impose an income tax in ***Multnomah Kennel Club v. DOR, 295 Or 279, 666 P2d 1327 (1983)***. That case involved the imposition of a business income tax by the county, and the court addressed the county authority issue as follows, "even in the absence of an express statutory grant, we hold it is an implicit power of a constitutional home rule county to levy taxes." 295 Or at 284. The rationale of the court in upholding the authority of the county to impose the business income tax applies equally to a personal income tax. Although the state also imposes a personal income tax on state residents, the state has not preempted the area of personal income taxation because, "The state is deemed to have exercised its power to preempt a field only where the intent to do so is apparent." 295 Or at 286. There is no provision in ORS Chapter 316 relating to state income tax that could be construed as intent by the legislature to preempt the field of income taxation.

III. The Multnomah County Income Tax does not violate uniformity of taxation required by Article IX Section 1 of the Oregon Constitution

Article IX Section 10 of the Oregon Constitution requires uniformity of taxation.

"The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly through the State."

The Oregon Supreme Court has interpreted this constitutional provision as a requirement that tax levied by the state be uniform throughout the state, but a tax levied by a local government (county or city) for a local purpose must be uniform throughout the county or city. **Jarvill v. Eugene, 289 Or 157 (1980)**. The county income tax is imposed uniformly throughout the county at 1.25% of each resident's Multnomah Adjusted Income. All residents are subject to the tax, and residency status is determined according to the definitions set forth in the Administrative Rules.

Multnomah Adjusted Income is defined as "Oregon taxable income less the income exception allowed by this subchapter." Multnomah County Administrative Rules 11-620. The income exemptions include the exemption for PERS retirement income imposed by ORS 238.445, and any federal retirement benefit that is taxed as income by the state of Oregon, as well as personal exemptions allowed for filing status of single, married filing separately, married filing jointly, head of household, or qualifying widow or widower.

The decision to exempt the state and federal retirement benefits was based upon sound legal advice and was not in any way arbitrary. The Commissioners are very familiar with the legal opinion and it will not be reiterated here.

IV. The Multnomah County Income Tax does not violate the equal protection clause of the federal constitution or the privileges and immunities clause of the state constitution.

It is well settled in Oregon that providing an income tax exemption to recipients of PERS retirement benefits, and recipients of federal retirement benefits, while not providing the same exemption to recipients of retirement benefits from other states, or private pensions, is not a violation of the equal protection clause or the privileges and immunities clause. **Simpson v. Department of Revenue, 12 OTR 455 (1993); affirmed 318 Or 579 (1994); review denied 513 U.S. 868 (1994)**.

V. Conclusion

The Oregon Supreme Court has determined that Multnomah County, a Constitutional home rule county has the authority to impose a local income tax. The County's decision to exempt PERS retirement income and federal retirement income from taxation is supported by Oregon statute. The Oregon courts have previously determined that such exemption is not a violation of either the Oregon or the Federal Constitutions.



Department of County Management
MULTNOMAH COUNTY OREGON

David Boyer, Director/CFO
501 SE Hawthorne, Suite 531
Portland, Oregon 97214
(503) 988-3903 phone
(503) 988-3292 fax

TO: Thomas Turja
Board of County Commissioners

FROM: Dave Boyer, Administrator, Multnomah County Income Tax

DATE: September 1, 2005

SUBJECT: Staff Report: Administrator's Response in the Multnomah County Income Tax Determination Appeal of Thomas Turja

I. Introduction.

Mr. Turja challenges the County's imposition of the ITAX, contending that the imposition of the tax is unconstitutional because PERS retirement income is exempted from the income tax, as is federal retirement income. The following is the Administrator's response to Mr. Turja written statement filed with the Board on June 17, 2005.

II. The Oregon Supreme Court has upheld the authority of a home rule county to impose an income tax.

The Oregon Supreme Court has upheld the authority of a home rule county to impose an income tax in **Multnomah Kennel Club v. DOR, 295 Or 279, 666 P2d 1327 (1983)**. That case involved the imposition of a business income tax by the county, and the court addressed the county authority issue as follows, "even in the absence of an express statutory grant, we hold it is an implicit power of a constitutional home rule county to levy taxes." 295 Or at 284. The rationale of the court in upholding the authority of the county to impose the business income tax applies equally to a personal income tax. Although the state also imposes a personal income tax on state residents, the state has not preempted the area of personal income taxation because, "The state is deemed to have exercised its power to preempt a field only where the intent to do so is apparent." 295 Or at 286. There is no provision in ORS Chapter 316 relating to state income tax that could be construed as intent by the legislature to preempt the field of income taxation.

III. The Multnomah County Income Tax does not violate uniformity of taxation required by Article IX Section 1 of the Oregon Constitution

Article IX Section 10 of the Oregon Constitution requires uniformity of taxation.

"The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly through the State."

The Oregon Supreme Court has interpreted this constitutional provision as a requirement that tax levied by the state be uniform throughout the state, but a tax levied by a local government (county or city) for a local purpose must be uniform throughout the county or city. **Jarvill v. Eugene, 289 Or 157 (1980)**. The county income tax is imposed uniformly throughout the county at 1.25% of each resident's Multnomah Adjusted Income. All residents are subject to the tax, and residency status is determined according to the definitions set forth in the Administrative Rules.

Multnomah Adjusted Income is defined as "Oregon taxable income less the income exception allowed by this subchapter." Multnomah County Administrative Rules 11-620. The income exemptions include the exemption for PERS retirement income imposed by ORS 238.445, and any federal retirement benefit that is taxed as income by the state of Oregon, as well as personal exemptions allowed for filing status of single, married filing separately, married filing jointly, head of household, or qualifying widow or widower.

The decision to exempt the state and federal retirement benefits was based upon sound legal advice and was not in any way arbitrary. The Commissioners are very familiar with the legal opinion and it will not be reiterated here.

IX. The Multnomah County Income Tax does not violate the equal protection clause of the federal constitution or the privileges and immunities clause of the state constitution.

It is well settled in Oregon that providing an income tax exemption to recipients of PERS retirement benefits, and recipients of federal retirement benefits, while not providing the same exemption to recipients of retirement benefits from other states, or private pensions, is not a violation of the equal protection clause or the privileges and immunities clause. **Simpson v. Department of Revenue, 12 OTR 455 (1993); affirmed 318 Or 579 (1994); review denied 513 U.S. 868 (1994).**

IV. Conclusion

The Oregon Supreme Court has determined that Multnomah County, a constitutional home rule county, has the authority to impose a local income tax. The County's decision to exempt PERS retirement income and federal retirement income from taxation is supported by Oregon statute. The Oregon courts have previously determined that such exemption is not a violation of either the Oregon or the Federal Constitutions.

**Written Statement – Appealing the Final Determination Letter
from the Administrator of the Multnomah County ITAX.**

**From: Thomas A. Turja
9124 N. Wall
Portland, OR 97203
Account # 26483777387**

**RECEIVED
JUN 17 2005**

**To: The Multnomah County Commission
501 S.E. Hawthorne Blvd, Suite 600
Portland, OR 97214**

The reasons the Administrators determination is incorrect:

The ITAX initiative unlawfully discriminates against Multnomah County residents, who are taxpayers, and are not a PERS/FERS retiree. This initiative is unconstitutional, as will be proven in the following text.

The correct determination should be:

We appreciate your insight, and we now understand the County ITAX is unconstitutional. The County must find other options to generate revenue, or cut costs to balance our budget.

**cc: Hardy Myers, Attorney General, Salem Office
Gordon Smith, Oregon Senator, Washington, D.C. Office
Ron Wyden, Oregon Senator, Washington, D.C. Office**

Confidential

6/9/2005

Table of Contents

Introduction	Pg 1
Creating a fair and equal tax system	Pg 2-4
PERS Contract v. Constitution	Pg 5-7
Horizontal Equity	Pg 8
Article 1, Section 32 – Taxes and duties, uniformity of taxation	Pg 9
Conclusion	Pg 10-11
Attachment 1 – Portland Tribune Article	Pg 12-13
Attachment 2 – Budget Manager's message 9	Pg 14
Attachment 3 – Hardy Myers Document No. 8267	Pg 15-19
Attachment 4 – Final Determination Letter	Pg 20

Introduction

In May of 2003, Multnomah County voters approved *measure 26-48*. This initiative imposes a three-year 1.25% income tax on county residents. The County Board adopted this measure in June 2003 by *ordinance 1012*.

The money raised on this temporary income tax measure is to go to county schools, health and senior care, public safety, and 5% to administer the program. The Oregon Constitution under *Article VI, Section 10* grants county voters authority to adopt a county charter, and Multnomah County *Charter 2.10* grants the county legislative authority "over matters of county concern to the fullest extent permitted by the constitutions and laws of the United States and the State of Oregon."

In November of 2004, County citizens voted against *measure 26-64* that would have repealed the temporary county income tax for the years of 2004 and 2005.

It's good to know that voters of Multnomah County understand the importance of funding schools. This is not my complaint.

The concern began when an article came out in the Portland Tribune dated Jan. 27, 2004. This article was written by Don Hamilton (Tribune Staff), and was titled "Public retirees excused from tax" (**Attachment 1**). Dave Boyer, the county's finance officer, and temporary ITAX Administrator commented in this article.

His quote was:

"When preparing the income tax measure last year, county officials thoroughly researched the tax code, but didn't find the PERS exemption."

The county admitted having limited experience in dealing with income tax issues, so they hired the law firm Ball Janik to explore the question. Ball Janik attorney Neil Kimmelfield quotes:

"The county could probably find legal grounds to argue in favor of taxing PERS benefits, but there is a substantial possibility that the courts would reject that argument."

Taxation issues have high visibility. How a tax administrator operates the measure directly reflects the character of the government agency. The collector must enforce a fair tax system evenly, or it will be seen as unfair and corrupt.

A good tax system will have few fluctuations and a high-degree of stability. With a state income tax system, the fluctuations can be quite large when the business cycle has a downturn. A downturn hit Multnomah County residents hard the past few years. The county sustained one of the highest unemployment rates in the nation for more than three years. This makes one understand the need to raise more money to balance the budget.

Creating a fair and equal tax system

Article IX Section 1 of the Oregon Constitution Requires:

That all taxes be levied and collected under general laws operating uniformly throughout the State.

Personal income tax under the Oregon Revised Statutes (ORS) is defined in ORS 316. The goals of the personal income tax are defined under ORS 316.003 and they are stated here:

316.003 Goals:

(1) The goals of the Legislative Assembly are to achieve for Oregon's citizens a tax system, which recognizes:

- (a) Fairness and equity as its basic values; and
- (b) That the total tax system should use seven guiding principles as measures by which to evaluate tax proposals.

(2) The guiding principles are:

- (a) Ability to pay;
- (b) Fairness;
- (c) Efficiency;
- (d) Even distribution;
- (e) The tax system should be equitable where the minimum aspects of a fair system are:
 - (A) That it shields genuine subsistence income from taxation;
 - (B) That it is not regressive;
 - (C) That it imposes approximately the same tax burden on all households earning the same income;
- (f) Adequacy; and
- (g) Flexibility.

(3) To meet those goals of Oregon's tax system, any tax must be considered in conjunction with the effects of all other taxes on Oregonians. [199] C.457 1a]

The ITAX violates the goals dictated under ORS 316.003. Multnomah County residents already pay more taxes per student than the State of Oregon allocates to the schools in the county. (*Oregonian* May 8, 2005). This is before the ITAX initiative. This tax is based on the income of county residents. It violates the fairness of that residency. The money is required for the county to provide services, for safety and welfare of the people of the county. *Article IX Section 1*, requires uniformity of taxes throughout the State.

All residents/households should be taxed in the same manner. By exempting PERS/FERS, it violates the basic values of ORS 316.003. This tax initiative fails to tax all county households in the same manner. The goals of this tax, in addition, do not abide by the rule of ability to pay. Quoted under Multnomah County's FY 2005 adopted budget, under budget manager's message 9 (Attachment 2).

The Manager Quotes:

"There are a couple of reasons why collections are expected to fall short of original estimates. One factor that has a significant impact is the decision to exempt state and federal retirees from paying this tax. This represents approximately \$5 million that was assumed in the original forecast. We also discovered that the data used to develop estimates of the tax revenue in Multnomah County included taxpayers who filed from a Portland address but actually reside in other counties. Given that many of those taxpayers live in high-income areas of Portland we believe that could account for another \$5 million in "lost" tax revenue."

Two very important issues pop out:

First, the word "decision" used to exempt state and federal retirees. Remember, the Ball Janik attorney stated:

"The county can probably find legal grounds in favor of taxing PERS benefits." This decision made by Multnomah County to exempt that group was "Arbitrary." In fact, the intent of this initiative was not to exclude any resident.

The word "Arbitrary" is defined in the Oxford Dictionary - American Edition, as: (based on uninformed opinion or random choice). Synonyms listed under this definition include the following words - erratic, uncertain, inconsistent, unpredictable, whimsical, irrational, and subjective. Multnomah County Administrators were subjective when the "decision" was made to exempt PERS/FERS from paying this tax.

Second, is the \$5 million of "lost" tax revenue.

Taxpayers that live in high-income areas should not be filing from a Multnomah County residence if they lived elsewhere. The budget manager knows exactly which taxpayers were given immunity from their 2003 actual income tax returns. The budget manager even puts the word "lost" in parenthesis. These are wealthy residents with second homes. The county has no ability and no desire to stop this evasion of taxation.

When you combine both the exempt PERS/FERS with the wealthy evaders, the total is \$10 million or about 8% of the total budgeted receipts. Then the county adds another 5% or approximately \$6 million a year to administrate the tax. All this

adds up to about \$16 million or 13% of total receipts per year. This is definitely a material amount of loss. The goals of taxation stipulate to aim at taxpayers with the "ability to pay." This violates that goal. The 8% that is exempted from paying, comes from a representation of the public that definitely has the ability to pay.

Instead the county is demanding payment from a group that lost the most from this unfortunate business cycle downturn, "the unemployed." There is no ethical reason for this decision.

The ITAX Administrator defines unemployment as the replacement of taxable wages. If it replaces taxable income, why did unemployment benefits max out at \$405 per week? I made over three times that amount before the factory shut down. Unemployment income was approximately \$50,000 a year less than my prior salary. That's not replacing my taxable wages. Furthermore, this federal subsistence was extended twice, to help out the unfortunate workers that lost their jobs. On the other hand, the benefit increase that does replace full and complete taxable wages is *Or Laws 1995, 569*. This legislative act increased all PERS members income (before tax) to offset their pension taxation. That issue will be discussed later in the text.

ORS 316.003(2)(e) states:

The tax should be equitable where the minimum aspects of a fair system are: (A) that it shields genuine subsistence income from taxation; (B) that it is not regressive; (C) that it imposes approximately the same tax burden on all households earning the same income.

This tax does not try to shield the tax burden from victims of this economic downturn, nor does it impose approximately the same tax burden on all households earning the same income. **This violates *ORS 316.003*.**

As a government body, Multnomah County may not violate either the state or federal constitutions. The county and its commissioners can be held liable if they engage in any activity that violates either constitution. ((*See 42 USC 1983*) (*Section 1983 ORS 30.265*))

All County Commissioners are required to take an oath to support both the state and federal constitution. (*See ORS 204.005, ORS 204.020*) The county commission has a duty to act in compliance with the constitution. This applies even when a court has not yet found a particular statute or government action unconstitutional. (*See Cooper & Eugene School District, 45, 301 Or 358, 364-65, 723 P2d 298 (1986)*)

This tax "rewards" more residents that have the ability to pay than those that do not. It was put together haphazardly, where equality rights are broken and there is no enforcement of wealthy taxpayer loopholes.

The ITAX violates *Article IX Section I*, of the Oregon Constitution.

PERS Contract v. Constitution

PERS members have no valid reason to receive additional tax benefits.

Much of this section will quote facts of *document N. 8267 (Attachment 3)*, written by Oregon State Attorney General, Hardy Myers.

First, lets understand the PERS contract with the State of Oregon:

The original purpose of [the tax exemption of PERS benefits] was to reduce payroll costs to the State of Oregon. The State would reduce current salaries paid to its employees in exchange for exempting the same employees' retirement benefits from state income taxes. *Simpson v. Dept. of Rev.*, 12 OTR 455 (1993).

Before 1991, Oregon exempted all income from state taxes for pension income of PERS. *ORS 316.680(1)(d)(1989)*. Federal retirees had a dollar limit for an exemption.

In 1989, under *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 109 S. Ct. 1500, 103 L. Ed2d 891 (1989), the U.S. Supreme Court held that federal statutory and constitutional principles of intergovernment tax immunity prohibit a state from providing a tax exemption for state and local pension benefits without providing a similar exemption for federal pension benefits.

In 1991, to comply with *Davis*, the Oregon Legislature repealed the state income tax exemption for PERS and local government pension income. They also increased PERS retirement income benefits by up to 4% to partially offset the loss of the exemption. *Or Laws 1991, ch 796*.

After further law suits (including *Hughes v. state of Oregon*, 314 Or.), legislature enacted PERS benefit increases that were designed to fully compensate PERS members for the loss of the tax exemption for benefits attributable to service performed before September 29, 1991. *Or Laws 1995, ch 569*.

Federal retirees challenged the 1995 benefit increase, and were judged to receive the same state income tax benefits PERS members received prior to September 29, 1991.

Under the PERS Contract with the State of Oregon, the PERS members received full compensation for their taxed pensions. **There is no valid reason they should receive any additional income tax benefits (including grossing-up) from the State or any sub-section within Oregon.** The State had a contract with PERS indicating no county or city could further tax them. Multnomah County was obligated to cancel the ITAX measure at that point. Article 1, Section 21 of the Oregon Constitution prohibits any law being passed that impairs the obligation of contracts, the plain language of *ORS 238.445* exempts PERS benefits from taxation by counties.

Multnomah County was forced to exempt PERS/FERS retirees, but in turn it made the ITAX more complex and violated the equality rights of taxation. The county was required to stop at that point and cut costs or find resources that abided by Oregon law.

Furthermore, *Senate Bill 497*, passed during the 73rd Oregon Legislative Assembly eliminated the special benefits to any PERS retiree that does not pay Oregon income tax. This legislative action applies to any PERS retiree that has moved to another state and is not an Oregon resident. This action was obviously adopted because PERS retirees were already compensated (in terms of income) with the vast majority.

Huckaba v. Johnson, 281 Or 23, 26, 573 P2d 305 (1978)

The Multnomah County Administrator, in his final determination letter, identifies this case for the reason the county is constitutional by exempting PERS/FERS retirees. He actually quotes: "*singling out of one particular class for taxation or exemption infringe upon no constitutional limitations.*" That's a bold statement. It's totally misleading and has since been addressed in the courts. That's all that needs to be said about that.

In *Huckaba*, a federal retiree challenged an Oregon statute that provided an income tax exemption for up to \$2400 of federal retirement income. Military retirement income received this benefit only after age 65. The reasoning being that military personnel generally enter the armed forces at an early age and are more likely to retire at an early age and get a second career. This gives it some rational.

Preceding cases upholding laws of the privileges and immunity clause have been issues relating to, non-residents verses residents, federal pensions verses state pensions, public pensions verses private pensions, and even individuals versus corporations. But, no cases have been filed between one equal taxpaying resident verses another equal taxpaying resident. No government agency has ever attempted discrimination based solely on residency alone, until now.

Article 1, Section 20 of the Oregon Constitution requires:

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

A violation of this constitutional provision requires there to be (1) a privilege or immunity, (2) which is denied to an individual or class of citizens, (3) without a rational foundation in light of the purposes of the law or programs at issue.

For the county to change intent merely to become constitutional with *Article 1, Section 21*, their devious action does not fill the requirement of complying with rational basis.

In the ITAX measure, there is a privilege or immunity given to the PERS/FERS retirees, which is denied to an individual or class of citizens, and it has no rational foundation in light of the purpose for the law being issued.

The administrator stated in the final determination that:

The equal protection clause of the Fourteenth Amendment to the United States Constitution provides that "No State shall deny any person within its jurisdiction the equal protection of the law. The equal protection of the laws required by the Fourteenth Amendment does not prevent States from resorting to classifications for the purposes of legislation and they have a wide range of discretion in that regard."

That statement was put on the final determination letter. (Attachment 4). However, the Administrator for some reason left out this next quote from document N. 8267, from Hardy Myers, Oregon State Attorney General:

"If the classification is reasonable, not arbitrary and rests upon some ground of difference having a fair and substantial relation to the object of the legislation so that persons similarly situated shall be treated alike."

No government body is entitled this wide of discretion to abuse power. This goes way too far when it comes to fair constitutional rights. Multnomah County officials know better.

Exempting PERS retirees' has no substantial relation to a residential income tax.

The Oregon Supreme Court has held that tax classifications survive constitutional scrutiny if there is a rational basis for the classification. However, it is not sufficient to merely point out differences between groups of taxpayers for divergent treatment. The differences justifying the attempted classification must bear a reasonable relationship to the legislative purpose.

The purpose of this measure is to tax residents for services provided. It has no relationship to the State of Oregon's contract with PERS members.

Even when an identifiable class exists, the courts generally have rejected attacks on class legislation "whenever the law leaves it open to anyone to bring himself or herself within the favored class on equal terms. State v. Clark, 291 Or 231, 240-41, 630 P2d 810 (1981). See also Wilson v. Dept. of Rev., 302 Or at 132.

No one has the ability to put themselves into the favored class. Either you are a PERS/FERS retiree or you are not.

This simply violates equal privileges that all residents are required under the Oregon Constitution (taxation issues or not).

Horizontal Equity

Multnomah County violates the horizontal equity of taxation.

Horizontal Equity is the most basic of applications of equal justice. In all government divisions big or small, if a person can prove that they are just like another, almost no one will deny that person a strong case for equality under all laws applying to the two of them. One would think if income were the only measure of a person, then two people with equal incomes would be treated as equals.

Income exclusions designated for an age group violate horizontal equity by benefiting taxpayers on the basis of age instead of the amount of income. Horizontal equity requires that those with equal status should be treated the same. They should pay the same amount of tax and receive the same amount of benefits. In other words, those starting as equals with the same before tax income should end up with the same after tax income.

Oregon gives private pension retirees as much as a 9% credit on the state income tax return. It does the same for federal and state retirees. Therefore, Oregon treats all pension income the same.

In 1995, *Or Laws 1995, Ch529 (House Bill 3349)*, authorized a 9.8 percent PERS increase to cover the amount of taxes that would be collected, so in essence, state and local government retirees did not lose any money out-of-pocket. The statute also expressly announces that the increase is paid "in compensation for damages suffered by members of PERS, by reason of subjecting PERS benefits to Oregon personal income taxation," it is intended as "full" complete and final payment of all members of the system.

That made all taxable income in Oregon equal. However, Multnomah County ITAX excludes federal and state retirees from paying.

The county will not win a constitutional ruling in this case. The constitution was adopted generations before this temporary ITAX. It will also be around generations after this temporary ITAX. Abiding by the laws of the constitution comes first, no matter how strongly an individual or government agency feels about a certain issue or how important that issue is.

This ITAX violates the horizontal equity of taxation and the equal privilege rights of the vast majority of taxpayers in Multnomah County.

Oregon Constitution Article I, Section 32 – Taxes and duties, uniformity of taxation

Section 32 requires:

No tax or levy shall be imposed without the consent of the people or their representatives in the Legislative Assembly, and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.

There is no contending that the tax did get the consent of the people. However, the county should have disclosed the PERS immunity "decision" on the title page of ballot measure 26-64 to appeal the ITAX in 2004-05. It wasn't mentioned at all.

What is being contested is the uniformity on the same class of subjects within the territorial limits of the authority levying the tax.

In fact, if you look at *Article I, Section 20*, *Article I, Section 32*, and the *U.S. Fourteenth Amendment* together, this issue becomes unambiguous. Common sense supports only one plausible interpretation. **The ITAX is not equitable.**

This is an income tax on residents of a territory. It goes to schools within the territory, to health and senior care within the territory, and to public safety for the territory. No one can deny that all people within that territory equally benefit from those services.

The U.S. Supreme Court allows a high degree of flexibility in classifying taxpayers. The Federal Government will let states handle their own tax affairs, as long as no federal worker or retiree gets unusual benefits. It will not tolerate any State income tax system that gives federal employees or retiree's favoritism over a majority of taxpayers.

Federal law dominates or "trumps" State law, so State equality and uniformity provisions cannot conflict with the Equal Protection Clause. States can decide to exempt a select group from paying a tax. As long as a State [*Davis v. Michigan Dept. of Treasury* 489 US, 803, 823] income tax draws no distinction between the federal employees or retirees and the vast majority.

If there is discrimination by a state against federal employees, it's just a matter of indifference to the Federal Government. As long as it can fairly be said that [*Davis* 489 US, 803, 824] federal employees are treated like other ordinary residents of the state.

Multnomah County's interest in adopting this discriminatory tax, no matter how substantial, is simply irrelevant to the nature of the two classes receiving inconsistent treatment. **This income tax of Multnomah County, gives special treatment to federal retirees over the vast majority of county taxpayers, it conflicts with federal law.**

Conclusion

To be equitable is to be just, and justice means lawfulness. This relationship concludes that equity is the highest of principles in both law making and law administration.

The Multnomah County Board of Commission as a government actor may not violate either the federal or state constitutions. In fact, the county and its commissioners may be held liable for engaging in activity that is in violation of either constitution. (See 42 USC 1983; "Section 1983"; ORS 30.265 (authorizing lawsuits against counties for violations of section 1983)).

The Multnomah County residential income tax initiative is one of the most basic discriminatory legislative acts ever attempted. Two of the most basic rights people have are citizenship and equality. There is no common sense to treat residents as not equals in this case.

The PERS/FERS classification exists merely as a motive not to breach the contract and violate *Article 1, Section 21* of the Oregon Constitution. There is no other legislative purpose to omit PERS/FERS from taxation on this initiative. This is a residential tax for services for all citizens to receive.

In short, PERS/FERS members have won every prior lawsuit that justifies their pensions as full and complete compensation for their retirement. For the State of Oregon, or Multnomah County, to give any additional benefits to PERS/FERS members, without equal benefits to the ordinary taxpayer is totally unacceptable by law.

I Appeal these violations:

- 1) *Article IX, Section 1*, of the Oregon Constitution; violations include:
 - a) *ORS 316.003(1)(a)* Fairness & Equality.
 - b) *ORS 316.003(2)(a)* Ability to pay.
 - c) *ORS 316.003(2)(b)* Fairness.
 - d) *ORS 316.003(2)(d)* Even distribution.
 - e) *ORS 316.003(2)(e)(A)* Shields subsistence income.
 - f) *ORS 316.003(2)(e)(C)* Imposes same tax burden on all households.
 - g) *Article IX Section 1* – All taxes shall be levied under general laws operating uniformly throughout the state.
- 2) *Article 1, Sections 20 and 32*, of the Oregon Constitution; violations include:
 - a) Equality of taxation rights.
 - b) It was an "Arbitrary decision" to exempt PERS/FERS retirees.
 - c) There was no rational basis to exempt PERS/FERS.
 - d) The exemption bears no relationship to the legislative purpose.
 - e) The non-favored class cannot put themselves into the favored class.

3) Federal law violations:

- a) Special treatment is given to federal retirees over the ordinary taxpayers.
- b) Horizontal equity tax rights are violated.
- c) The legality of taxing the federal funded unemployment subsistence income.
- d) The moral rights for a county, to add a new tax, and subject the unemployed workers to the tax, while deciding to let their own public retirees off the hook.

4) The administrator states: "the Oregon legislature to promote the security of the Oregon employee retirement system prohibits counties from taxing Oregon PERS retirement benefits".

I'm not sure if the legislature actually says this, but please explain what the administrator means by: "to promote the security of the Oregon employee retirement system". This statement needs more clarification.

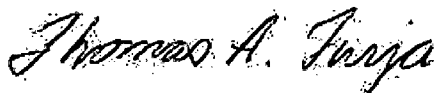
Each Multnomah County Commissioner is required by state law to take an oath to support both the federal and state constitutions: (See ORS 204.005, ORS 204.020). The County's duty to act in compliance with the constitution applies even when a court has not yet found a particular statute or government action unconstitutional. (See Coopers & Eugene School District 4J, 301 Or 358, 364-65, 723 P2d 298 (1986)).

In essence, government officials have a duty to follow the constitution regardless of whether a court has ruled on the constitutionality of a particular issue. I emphasize to each one of you, carefully make the proper decision. If the decision is to reject my appeal, please advise me of my circuit court options and the timeframe allowed to file a lawsuit.

Finally at this time, what ever side the County Commission takes, I give my written request for privacy. This request is hereby submitted under OR Law Chapter 192.445(2)(b)(E).

This request asks for: Nondisclosure of home address, home telephone number, and electronic mail address.

Thank you very much.



Thomas A. Turja

Multnomah County Resident and Citizen

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Public retirees excused from tax

Income tax loophole puts PERS benefits off-limits to county

By DON HAMILTON Issue date: Tue, Jan 27, 2004
The Tribune

Many retired public employees won't be required to pay Multnomah County's new income tax on their pension benefits, county officials discovered recently.

A little-known 1989 state law exempts Public Employees Retirement System benefits from being taxed by local government. Federal pensions won't face the county tax, either, because a U.S. Supreme Court ruling requires jurisdictions to tax state and federal pensions the same way.

The financial impact remains uncertain. Dave Boyer, the county's finance officer, said the hit might be more than \$1 million out of the \$128 million the county hopes to raise annually under the three-year tax.

"It's probably not substantial," said Bob Gravely, the county's income tax information director. "It won't blow a hole in the county tax."

The discovery of the special exemption comes as voters decide on Measure 30, the income tax increase passed by the Legislature in August to help balance the state's 2003-05 budget. The mail-in ballots are due Feb. 3.

Last May, Multnomah County voters established Oregon's first county income tax, earmarked for schools and other services cut by the state. The tax requires any Multnomah County resident who pays Oregon income taxes to file an additional county tax return.

But on Dec. 1, a retired assistant attorney general wrote county officials, citing the law and challenging their right to tax her PERS retirement income. The law says PERS benefits "shall be exempt from garnishment and all state, county and municipal taxes" except for the state income tax.

The law was part of a broader PERS reform that required PERS recipients to pay state income taxes on their benefits. PERS benefits had been exempt from state income taxes before then, although federal pension benefits were taxed. A 1989 U.S. Supreme Court ruling prohibited tax collectors from treating the pensions differently.

Boyer said that when preparing the income tax measure last year, county officials thoroughly -researched the tax code but didn't find the PERS exemption.

"It's a state law, and we were not aware of it," he said. "It was not in the income tax laws. We did our due diligence but missed it."

Other interest groups are exempt from some local taxes. For example, the Legislature exempted real estate agents from local business taxes, Boyer said.

The county, having limited experience in dealing with income tax issues, hired the law firm Ball Janik to explore the question. In a Dec. 31 memo, Ball Janik attorney Neil Kimmelfield said the county could probably find legal grounds to argue in favor of taxing PERS benefits, but "there is a substantial possibility that the courts would reject that argument."

"The plain language of ORS 238.445," he wrote, "exempts PERS benefits from income taxation by counties."

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Wheel Love

Attachment 1
pg 2

So the county decided to exempt the retirees from the tax. Multnomah County Attorney Agnes Sowle said losing in court could be expensive. First, the county would need an outside law firm with tax expertise. And, if it lost, it would have to refund the tax plus interest and could be required to pay penalties and the opponent's legal bill.

Louie Waldon, a retired Teamster living in Portland, doesn't think it's fair that some retirees pay while others don't.

"I don't mind paying the tax, but if I'm going to pay it, I prefer that everyone else is going to have to pay it, too," Waldon said. "I think we ought to have a new election on it."

County tax forms have already been printed, but the Web site tax form is being revised. It involves nothing more complicated than adding an extra line where taxpayers can subtract their PERS or federal pension income from their Oregon taxable income. Only then will the tax be calculated.

More than 10,000 taxpayers have made early payments on the tax, but refunds will be mailed to anyone whose tax is dropping because of the change.

For more information, call the Multnomah County tax line at 503-988-4829.

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Budget Manager's Message

ITAX Comparison FY 2004 to FY 2005

Department	FY 2004 ITAX	FY 2005 ITAX	Difference
DA	2,112,000	2,112,000	-
MCSO	6,249,000	6,249,000	-
DCJ	5,900,000	5,900,000	-
OSCP	200,000	200,000	-
DCHS	14,410,000	14,410,000	-
Health	3,092,000	3,092,000	-
BCS	6,855,000	5,318,000	(1,537,000)
Total	38,818,000	37,281,000	(1,537,000)

The \$1.5 million difference is a result of one-time-only start-up expenses incurred in FY 2004 and unnecessary in FY 2005.

BM 30 & ITAX

The State did not release the final details of its BM 30 cuts prior to Multnomah County's June budget adoption. As such, we may be required to reopen the budget at a later time to reflect the reductions as we learn about them.

Because ITAX programs backfilled state programs which were reduced or eliminated, the BM 30 cuts will force us to reexamine the validity of the funding framework and distribution of ITAX revenues. The Board has indicated its commitment to meet the intent of the voters and the legal requirements of the Temporary Personal Income for Public Schools, Public Safety and Human Services.

We now have a fairly accurate picture of the status of ITAX revenue collections. Revenue estimates were made in an environment of uncertainty, due to a lack of historical experience. Through May we have received gross revenue of nearly \$100 million from 2003 tax returns. We ultimately expect to collect anywhere from \$115 - \$118 million when all 2003 tax collections are tallied.

There are a couple of reasons why collections are expected to fall short of original estimates. One factor that has a significant impact is the decision to exempt state and federal retirees from paying the tax. This represents approximately \$5 million that was assumed in the original forecast. We also discovered that the data used to develop estimates of tax revenue in Multnomah County included taxpayers who filed from a Portland address but actually reside in other counties. Given that many of those taxpayers live in high income areas of Portland we believe that could account for another \$5 million in "lost" tax revenue.

March 30, 1999

Attachment 3
Pg 1

NO. 8267

This opinion is issued in response to a question from Jon Yunker, Director, Oregon Department of Administrative Services, concerning the state personal income tax treatment of private pension income.

QUESTION PRESENTED

Does Oregon unlawfully discriminate in taxing private pension income while:

1. Providing a pension benefit increase to Public Employees' Retirement System (PERS) retirees that is the functional equivalent of a rebate of Oregon personal income taxes attributed to their PERS pension income, and
2. Not taxing federal pension income?

ANSWER

No.

DISCUSSION

I. Background

Before 1991, Oregon exempted from state taxable income all pension income received from PERS. ORS 316.680(1)(d) (1989). The law further exempted all pension income received by retirees and their surviving spouses from non-PERS public retirement systems maintained by public employers within Oregon. ORS 316.680(1)(c) (1989). There was a limited exemption for pension income from federal retirement systems, subject to a maximum dollar limit. *Id.* There was no exemption for private pension income.

In 1989, the United States Supreme Court held that federal statutory and constitutional principles of intergovernmental tax immunity prohibit a state from providing a tax exemption for state and local government pension benefits without providing a similar exemption for federal pension benefits. *Davis v. Michigan Dept. of Treasury*, 489 US 803, 109 S Ct 1500, 103 L Ed2d 891 (1989). To comply with *Davis*, the 1991 Oregon legislature repealed the state income tax exemptions for PERS and local government pension income. Or Laws 1991, ch 823, § 3. The legislature also increased PERS retirement benefits by up to 4 percent to partially compensate PERS members for the loss of the tax exemption. Or Laws 1991, ch 796.

PERS members immediately commenced a lawsuit challenging the repeal of the tax exemption. The Oregon Supreme Court held that the repeal breached the employment contract between participating public employers and PERS members to the extent it required taxation of benefits attributable to services performed before September 28, 1991, the effective date of the repeal. *Hughes v. State of Oregon*, 314 Or 1, 36, 838 P2d 1018 (1992). The *Hughes* court declined to comment on the appropriate remedy for the breach, noting that "[t]he legislature is the most appropriate branch of government in the first instance to choose among the available remedies." *Id.* at 33 n.36.

In 1993 and 1994, PERS members filed two lawsuits, subsequently consolidated, to recover damages for the breach of their employment contract. After several years of litigation, the case was settled. Pursuant to the settlement agreement, the legislature enacted PERS benefit increases that were designed to fully compensate PERS members for the loss of the tax exemption for benefits attributable to service performed before September 29, 1991. Or Laws 1995, ch 569; Or Laws 1997, ch 175.

Federal retirees challenged the 1995 benefit increase, alleging that it was a tax rebate that illegally favored state and local government retirees over federal retirees. The Oregon Supreme Court held that the 1995 increase was the functional equivalent of a tax rebate and that, under *Davis*, the state could not provide such a rebate without providing similar tax treatment to federal retirees. *Vogl v. Dept. of Rev.*, 327 Or 193, 208, 960 P2d 373 (1998). The court declined to direct a remedy, but remanded the case to the Tax Court for further proceedings. *Id.* at 212. On remand, the case was certified as a class action and the parties agreed to a stipulated judgment, which was entered by the court. The judgment requires the Oregon Department of Revenue to refund state personal income taxes paid by members of the class to the extent those taxes were attributable to federal pension income based on services performed before September 29, 1991. In addition, the Department of Revenue must allow class members to exclude from their taxable income in future tax years all federal pension income attributable to services performed before September 29, 1991.

II. Legality of Providing Unequal Tax Treatment to Private Pension Income

Attachment 3
Pg 2

State legislative power is plenary subject only to limitations imposed by the state and federal constitutions and preemptive federal statutes and regulations. See, e.g., *Latourette v. Clackamas Co. et al.*, 131 Or 168, 170, 281 P 182 (1929). Accordingly, our review is confined to determining whether the disparate tax treatment afforded private pension income violates a limitation found in one of those authorities.

No federal statutes or regulations prohibit the states from treating public and private pension income differently for tax purposes. Therefore, the scope of our inquiry is limited to whether such different treatment violates any state or federal constitutional provision. Disparate tax treatment potentially implicates three constitutional limitations: (a) the tax uniformity requirements of Article I, section 32, and Article IX, section 1, of the Oregon Constitution; (b) the equal privileges and immunities guarantee in Article I, section 20, of the Oregon Constitution; and (c) the equal protection guarantee of the Fourteenth Amendment to the United States Constitution.

We begin by analyzing the state constitutional limitations. See, e.g., *Sterling v. Cupp*, 290 Or 611, 614, 625 P2d 123 (1981); *Cooper v. OSAA*, 52 Or App 425, 432, 629 P2d 386 (1981); *rev den* 291 Or 504, 634 P2d 1347 (1981) (citing *State v. Spada*, 286 Or 305, 594 P2d 815 (1979)). See also Linde, *First Things First, Rediscovering the State's Bill of Rights*, 9 Bal L Rev 379 (1980).

A. Tax Uniformity Provisions Under the Oregon Constitution

Two provisions in the Oregon Constitution require uniform taxation. Article I, section 32, provides, in part, that:

all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.

Article IX, section 1, provides:

The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the State.

The Oregon Supreme Court has held that tax classifications survive constitutional scrutiny under these provisions if there is a rational basis for the classification. The court explained:

What is required in assessing a constitutional challenge to classification for tax benefit is a review of the grounds for the classification to determine if it rests upon a rational basis. The legislature may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. * * * It, however, is not sufficient to merely point out differences between the groups of taxpayers for divergent treatment. The differences justifying the attempted classification must bear a reasonable relationship to the legislative purpose.

Huckaba v. Johnson, 281 Or 23, 26, 573 P2d 305 (1978) (citations omitted).

In *Huckaba*, a federal retiree challenged an Oregon statute that provided an income tax exemption for up to \$2,400 of federal retirement income other than military retirement income. Military retirees were eligible for this exemption only after reaching age 65. Moreover, the exemption for military retirees was reduced, dollar for dollar, by any earned income received by the retiree during the taxable year. ORS 316.067(1)(c) and (3) (1975). The Department of Revenue argued that the reason for this disparate treatment was that military personnel, unlike other federal employees, were eligible for retirement after 20 years of service, regardless of age. Because military personnel generally enter the armed forces at a relatively early age, they are more likely than other federal employees to retire while still young enough to pursue a second career and to earn additional retirement benefits in that career. The court held that this rationale established a reasonable basis for the challenged law and, therefore, the disparate treatment afforded military retirees did not violate Article I, section 32, or Article IX, section 1, of the Oregon Constitution. 281 Or at 28-31. The *Huckaba* court emphasized that a tax classification need not be narrowly drawn, but may instead be a general one based on characteristics typical of the affected class:

General rules are essential if a system of the magnitude and complexity of the Personal Income Tax Act is

INTER-STATE 12
293

to be administered with a modicum of efficiency, even though application of the rule may produce seemingly arbitrary consequences in some cases. A nonmilitary federal retiree may, in fact, after retirement obtain employment and create an additional retirement fund. Or conversely an Armed Forces retiree may be unable to enter a new career and be required to subsist on his military retirement pay. Making these determinations would require individualized proof as each income exclusion was claimed. The legislature could reasonably choose between a system of individualized inquiry and a general rule based on the source of the retirement benefit. The former method would introduce complexities in the administration of an already complex tax system and increase the expense of administration. The choice between these competing policies is a legislative determination and the decision to accord the benefit on the basis of an easily ascertainable criterion does not offend constitutional principles.

12 at 30-31.

More recently, the courts have upheld Oregon's taxation of public retirement benefits paid by the state of Alaska from 1985 through 1990, even though PERS benefits were exempt from tax during that time period. *Simpson v. Dept. of Rev.*, 12 OTR 455 (1993), *aff'd* 318 Or 579, 870 P2d 824 (1994). The taxpayer in *Simpson* had argued that the failure to exempt benefits paid by Alaska's pension plan violated, among other things, Article I, section 32, of the Oregon Constitution. 12 OTR at 456. The tax court rejected the taxpayer's argument, noting:

The purpose of [the tax exemption for PERS benefits] is to reduce payroll costs to the State of Oregon. The state can reduce current salaries paid to its employees in exchange for exempting the same employees' retirement benefits from state income taxes; this is certainly within the legislature's power. This court has previously found such purpose is a "rationale [sic] predicate" for the classification.

12 at 457-8 (footnote omitted) (citing *Lindau v. Dept. of Rev.*, 10 OTR 92, 93 (1985)). The tax court further observed that the taxpayers did not challenge the taxation of retirement benefits received from private pension plans; "recognizing that they may be substantially different." 12 OTR at 457 n.3. On appeal, the Oregon Supreme Court affirmed the tax court's holding, stating that the taxpayers "have not advanced any viable legal basis supporting their contentions." 318 Or at 581.

Under *Huckaba*, the state has broad discretion to establish tax classifications as long as the distinction supporting the classifications rests on a rational basis, which "any conceivable state of facts" would support. *Huckaba*, 281 Or at 26. *Simpson* stands for the further proposition that the state may rationally decide to compensate Oregon public employees by providing a tax exemption instead of additional cash compensation or other employee benefits, while taxing non-PERS pension income. 12 OTR at 457-8, *aff'd* 318 Or 579; *see also Lindau v. Dept. of Rev.*, 10 OTR at 93. The same rationale applies to the 1995 and 1997 PERS benefit increases, which compensated PERS members for the loss of the tax exemption. Thus, we conclude that Oregon's constitutional tax uniformity provisions do not require equal tax treatment of PERS benefits and private pension income.

Under *Davis*, discussed above, federal principles of intergovernmental immunity require equal treatment of Oregon government and federal pension income. The state's decision not to tax federal pension income attributable to services performed before September 29, 1991, was for the purpose of correcting a violation of those federal law principles and complying with the terms of a court judgment. Under the circumstances, the state's decision not to tax federal pension income was manifestly rational. In contrast, the federal intergovernmental immunity principles do not require equal tax treatment of public and private pension income. Accordingly, we conclude that the state does not violate Oregon's constitutional tax uniformity provisions in providing a tax exemption for federal pension income without providing a similar exemption for private pension income.

To summarize, we conclude that the state's taxation of private pension income does not violate Article I, section 32, or Article IX, section 1, of the Oregon Constitution.

B. Equal Privileges and Immunities Under the Oregon Constitution

Article I, section 20, of the Oregon Constitution provides:

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

A violation of this constitutional provision requires there to be (1) a privilege or immunity, (2) which is denied to an individual or class of citizens, (3) without a rational foundation in light of the purposes of the law or program at issue.

Privilege or Immunity

To establish a violation of Article I, section 20, the plaintiff must first show that there is a privilege or immunity that someone else is receiving. *State v. Scott*, 96 Or App 451, 455, 773 P2d 394 (1989). Recipients of private pension income are taxed on that income, while recipients of PERS and federal pension income either are not taxed or are compensated for the tax by a commensurate increase in their pension income. Thus, private retirees are denied a privilege that is provided to PERS and federal retirees.

2. Discrimination Against a Class

The next issue is whether the taxation of private pension income constitutes a denial of a privilege to a cognizable "class" of citizens within the meaning of Article I, section 20. The Oregon Supreme Court has consistently held that laws establishing classifications do not automatically violate Article I, section 20.

[T]his court will not invalidate a law on the simple grounds that the law classifies individuals or groups of individuals. "[E]very law itself can be said to 'classify' what it covers from what it excludes." *State v. Clark, supra*, 291 Or at 240. Article I, section 20, prohibits those schemes that classify "persons or groups by virtue of characteristics which they have apart from the law in question."

Wilson v. Dept. of Rev., 302 Or 128, 131-32, 727 P2d 614 (1986).

Generally, to be cognizable under Article I, section 20, a class must be identifiable by virtue of social or personal characteristics that exist apart from the classification created by the challenged government action; classes that are created solely by the challenged law itself "are entitled to no special protection and, in fact, are not even considered to be classes for the purposes of Article I, section 20." *Sealey v. Hicks*, 309 Or 387, 397, 788 P2d 435 (1990), *see also Greist v. Phillips*, 322 Or 281, 292, 906 P2d 789 (1995); *Hale v. Port of Portland*, 308 Or 508, 524-26, 783 P2d 506 (1989). Even when an identifiable class exists, the courts generally have rejected attacks on class legislation "whenever the law leaves it open to anyone to bring himself or herself within the favored class on equal terms." *State v. Clark*, 291 Or 231, 240-41, 630 P2d 810 (1981); *see also Wilson v. Dept. of Rev.*, 302 Or at 132.

Although these principles are easily articulated, their application to specific cases can be problematic. The Supreme Court's analysis of "true classes" under Article I, section 20, has not been entirely clear or consistent. *See Neher v. Chartier*, 124 Or App 220, 225-26 n 3 (summarizing cases), 862 P2d 1307 (1993), *rev'd* 319 Or 417, 879 P2d 156 (1994). Based on the current status of the law, we believe it is an open question whether the Supreme Court would consider such groups as "private retirees," "federal retirees" and "PERS retirees" to be "true classes." Compare *State ex rel. Huddleston v. Sawyer*, 324 Or 597, 932 P2d 1145 (1997) and *Wilson v. Dept. of Rev.*, 302 Or 128, with *Sealey v. Hicks*, 309 Or 387. We need not step into this quagmire because our analysis of the third element of Article I, section 20, is determinative. Therefore, we will assume, solely for purposes of reaching an analysis of the third element, that these groups are cognizable classes under Article I, section 20.

3. Rational Basis Test

We next consider whether anything about the source of the private retirees' pension income justifies the discriminatory tax treatment. A discriminatory classification violates Article I, section 20, only if it "either is impermissibly based on persons' immutable characteristics and reflects 'invidious' social or political premises or has no rational foundation in light of the enabling statute's purposes." *Northwest Advancement v. Bureau of Labor*, 96 Or App 133, 142, 772 P2d 943, *rev'd en* 308 Or 315 (1989). The tax classification at issue here is based on the source of the taxpayer's pension income and therefore does not constitute "invidious" discrimination based on immutable personal characteristics of the disfavored class. *See* Letter of Advice dated October 14, 1985, to Raymond P. Thorne, Administrator, Employment Division (OP-5878) at 3 (distinction based upon tax rates does not create suspect class). The issue, therefore, is whether the classification lacks a rational foundation in light of its purposes. *See Huckaba v. Johnson*, 281 Or at 26.

For the reasons discussed in Part IIA above, there is a rational basis for providing favorable tax treatment to federal and PERS pension income while taxing private pension income. The Oregon Supreme Court has applied the same rational basis test to determine whether discriminatory tax treatment of pension income violates Article I, section 20. *Huckaba*, 281 Or 23. Because there is a rational basis for the disparate tax treatment afforded private retirees, we conclude that the disparity does not violate Article I, section 20, of the Oregon Constitution.

C. Equal Protection Under the United States Constitution

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "No State shall * * * deny to any person within its jurisdiction the equal protection of the laws." The Oregon Supreme Court has noted:

The equal protection of the laws required by the Fourteenth Amendment does not prevent states from resorting to classifications for the purposes of legislation and they have a wide range of discretion in that regard * * * if the classification is reasonable, not arbitrary and rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that persons similarly situated shall be treated alike. *This latitude is notably wide in classifications for purposes of taxation.*

Dutton Lbr. Corp. v. Tax Com., 228 Or 525, 539, 365 P2d 867 (1961) (citations omitted, emphasis added) (citing *Royster Guano Co. v. Virginia*, 253 US 412, 40 S Ct 560, 64 L Ed 989, 990 (1920)).

Oregon courts generally find a classification to be constitutional under the federal equal protection clause if it is constitutional under Article I, section 20, of the Oregon Constitution. See, e.g., *State v. Freeland*, 295 Or 367, 370, 667 P2d 509 (1983) ("The test of unequal treatment under Or. Const. art. I, § 20, is not always the same as the tests articulated from time to time under the federal equal protection clause, although the clauses are sufficiently similar that compliance with article I, section 20 usually will also satisfy the 14th amendment"); *State v. Clark*, 291 Or at 243 ("for most purposes analysis under Article I, section 20 and under the federal equal protection clause will coincide"); *Cooper v. OSAA*, 52 Or App at 432 (scope of Article I, section 20, and the federal equal protection clause are generally the same). For the reasons discussed above, we find that the tax classification at issue here rests on a rational basis, and we therefore conclude that the disparate tax treatment afforded private pension income does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

HARDY MYERS

Attorney General

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Multnomah County Personal Income Tax
 ITAX Administrator
 PO Box 279
 Portland, OR 97207-0279
 503-988-ITAX (4829)
 www.multcotax.org



The ITAX Administrator has reviewed your protest under the provisions of ITAX Administrative Rule § 11-614(A) and has denied your protest and issues this Final Letter of Determination.

The Oregon Constitution Article VI, section 10 grants county voters authority to adopt a county charter.

Multnomah County Charter Section 2.10 grants the county legislative authority "over matters of county concern to the fullest extent permitted by the constitutions and laws of the United States and the State of Oregon." Multnomah County has authority to enact laws taxing incomes to pay for county services required for the health, safety and welfare of the people of the county.

On May 20, 2003, Multnomah County voters approved Measure 26-48 imposing a three year 1.25% income tax for county schools, health and senior care and public safety. On June 19, 2003, by Ordinance 1012, the Board adopted the voter-approved Measure.

In addition, the Oregon legislature to promote the security of the Oregon employee retirement system prohibits counties from taxing Oregon PERS retirement benefits in ORS 238.445(1). Multnomah County, like the United States and Oregon taxes unemployment insurance because it replaces taxable wages. It's not unconstitutional for Oregon not to tax Social Security benefits but to tax unemployment benefits. It also not unconstitutional for Multnomah County not to tax social security or PERS benefits, but to tax unemployment benefits.

Equal protection of the laws as required by the Fourteenth Amendment or the Oregon privileges and immunities clause does not prevent the state of Oregon or Multnomah County from resorting to classifications for the purpose of legislation and they have a wide range of discretion. That latitude is notably wide in classifications for purposes of taxation. Inequalities that result from singling out of one particular class for taxation or exemption infringe upon no constitutional limitations. *Huckaba v. Johnson*, 281 Or. 23 (1978).

Consequently, the Administrator has determined that the Multnomah County personal income tax is constitutional and was properly adopted.

You have 30 days from the date of this letter to pay this billing or to file a written notice of appeal. If you file a written notice of appeal within the 30 days allowed by the administrative rules, you must then file a written statement with the facts and legal issues relating to your appeal to the Multnomah County Board of Commissioners within 90 days from the date of this letter. You may refer to "Your Right to Appeal" for information regarding the content of this statement or call the Help Desk at (503) 988 - ITAX (4829) for any clarification.

Approved:

David A. Boyer
 ITAX Administrator
 Chief Financial Officer
 Multnomah County, Oregon

Dated: April 20, 2005

Multnomah County Personal Income Tax
ITAX Administrator
PO Box 279
Portland, OR 97207-0279
503-988-4829
www.multcotax.org



February 4, 2005

THOMAS TURJA
9124 N WALL AVE
PORTLAND OR 97203-2660

RE: 2003 Multnomah County Personal Income Tax Return
RESPONSE REQUIRED NO LATER THAN: March 6, 2005
Account Number(s) 26483777387

Dear Taxpayer[s]:

In May 2003, the voters of Multnomah County approved a County Personal Income Tax (ITAX) upon all residents of Multnomah County for schools, healthcare, senior services and public safety.

We have received information from the Oregon Department of Revenue for the 2003 tax year which indicates that you have filed your 2003 Oregon income tax return using a Multnomah County address. This would support our conclusion that you appear to be a Multnomah County resident subject to the County (ITAX).

We realize that for various valid reasons some taxpayers, who are not residents of the County, have utilized Multnomah County addresses to file Oregon returns or register their driver's licenses using Multnomah County addresses. We apologize for any inconvenience this letter may cause you if this is your situation.

However, while the vast majority of Multnomah County residents have filed and paid their 2003 Multnomah County income tax, many have not. It is not fair to those residents who have voluntarily complied with the tax to support basic services that others who are also responsible for the tax have not. Our matching program is the only way we have to ensure the fundamental fairness of this tax.

Important: If you are not a Multnomah County resident, please provide us with your primary residence address information, including when it became your primary residence and any other information that supports your residency. Upon receipt of this information, we may request some additional documentation to verify your residency. Please use the Reply section on the back to supply any explanation about your residency.

Important: If you are a Multnomah County resident please complete and file a return by March 6, 2005. The return should include penalty and interest calculations. If you submit your return and payment by March 6, 2005, you may also request in writing a penalty waiver, which the County will review. If you cannot pay in full by March 6, 2005, you may request a 6-month payment plan.

For your convenience enclosed is the 2003 ITAX return. A self-calculating form is also available on our Website, www.multcotax.org. This form can automatically compute penalties and interest. Rules regarding the calculation of penalties and interest are included with this package.

If we do not receive your completed tax return, payment (or payment plan request) by March 6, 2005 or supporting information if you are not a Multnomah County resident, we will compute a return based upon the information obtained from the Department of Revenue and send you a tax assessment that will include penalty and interest. The County will not consider a penalty waiver request in this case.

If you have any questions or need additional assistance please call 503-988-4829. Thank you for your prompt attention to this request.

Please complete the Reply section below and return to:
Multnomah County ITAX
PO Box 279
Portland, OR 97207-0279

Reply Information

Account Number(s) 26483777387.

- ☐ Attached is my tax return and payment
- ☐ Attached is my tax return and I am requesting a payment plan
- ☐ I am not a Multnomah County resident. *This information must be provided in writing.* I have included a written explanation of my residency during 2003 and have attached the following documentation:
- ☐ Property tax statement for permanent residence outside of Multnomah County.
 - ☐ Rental agreement for permanent residence outside of Multnomah County.
 - ☐ Utility bill (electric, water, gas, cell phone etc.) for permanent residence outside of Multnomah County.
 - ☐ Phone listing for permanent residence outside of Multnomah County.
 - ☐ Other *please describe* _____

Signed: _____
THOMAS TURJA

Dated: _____

Signed: _____

Dated: _____

Multnomah County Personal Income Tax
ITAX Administrator
PO Box 279
Portland, OR 97207-0279
503-988-4829
www.multicotax.org



March 15, 2005

Initial Letter of Determination

You have been sent a letter asking you to respond by filing a 2003 Multnomah County income tax return or to explain why you are not responsible for paying the (Multnomah County Personal Income Tax (ITAX)). You have failed to send in a return or an explanation.

The Administrator has determined based on the available evidence that you are a County resident as defined in §11-605 and subject to the (ITAX) under §11-625.

You have 30 days from the date of this letter of determination to pay the assessed tax, penalty, and interest or to file a written protest. Please include a copy of this initial letter of determination with your protest, which should provide the facts and legal issues explaining why you are not responsible for the tax.

You may refer to "Your Right to Appeal" for information regarding the content of this protest and the appeals process or visit our website at www.multicotax.org or call (503) 988-4829 for any clarification.

Primary Account Number	26483777387	
Secondary Account Number		
2003 Oregon taxable income (as reported by State of Oregon)		\$17,059.00
Income exemption		\$2,500.00
Multnomah adjusted income		\$14,559.00
Residency Fraction		1
Multnomah County Taxable Income		\$14,559.00
Tax Rate		1.25%
2003 Multnomah County Tax		\$182.00
Penalty		\$45.50
Interest		\$10.86
Total Prepayments and Withholdings		\$0.00
Total Determination of Amount Due/(Refund Due)		\$238.36

If you are in agreement with this letter of determination of total amount due, you should detach the payment coupon below and return with your payment to stop the accruing of additional interest. If a refund is due, you may expect the check within 4-6 weeks. If you choose to ignore this letter, you will be placed into our normal collection process.



DETACH AND RETURN WITH PAYMENT



MULTNOMAH COUNTY ITAX
PO BOX 279
PORTLAND, OR 97207-0279

ACCOUNT #	DUE DATE	PMT DUE
26483777387	4/14/05	\$238.36

Please make your check payable to Multnomah County ITAX.
Please do not include any other correspondence with your payment.
Payments due on weekends or holidays must be received the previous business day.
Postmark is not receipt.

DOR 2003

AMOUNT ENCLOSED
\$

THOMAS TURJA
9124 N WALL AVE
PORTLAND, OR 97203-2660

MULTNOMAH COUNTY ITAX
PO BOX 279
PORTLAND, OR 97207-0279

Multnomah County Personal Income Tax
ITAX Administrator
PO Box 279
Portland, OR 97207-0279
503-988-ITAX (4829)
www.multicotax.org



April 20, 2005

Final Letter of Determination

See attached on Second Page

DETACH AND RETURN WITH PAYMENT



MULTNOMAH COUNTY ITAX
PO BOX 279
PORTLAND, OR 97207-0279

ACCOUNT #	DUE DATE	BALANCE DUE
26483777387	05/21/05	\$238.36

*Please make your check payable to Multnomah County ITAX.
Please do not include any other correspondence with your payment.
Payments due on weekends or holidays must be received the previous business day.
Postmark is not receipt.*

AMOUNT ENCLOSED
\$

THOMAS TURJA
9124 N. WALL AVE
PORTLAND, OR 97203-2660

Multnomah County Personal Income Tax
ITAX Administrator
PO Box 279
Portland, OR 97207-0279
503-988-ITAX (4829)
www.multcotax.org



The ITAX Administrator has reviewed your protest under the provisions of ITAX Administrative Rule § 11-614(A) and has denied your protest and issues this Final Letter of Determination.

The Oregon Constitution Article VI, section 10 grants county voters authority to adopt a county charter.

Multnomah County Charter Section 2.10 grants the county legislative authority "over matters of county concern to the fullest extent permitted by the constitutions and laws of the United States and the State of Oregon." Multnomah County has authority to enact laws taxing incomes to pay for county services required for the health, safety and welfare of the people of the county.

On May 20, 2003, Multnomah County voters approved Measure 26-48 imposing a three year 1.25% income tax for county schools, health and senior care and public safety. On June 19, 2003, by Ordinance 1012, the Board adopted the voter-approved Measure.

In addition, the Oregon legislature to promote the security of the Oregon employee retirement system prohibits counties from taxing Oregon PERS retirement benefits in ORS 238.445(1). Multnomah County, like the United States and Oregon taxes unemployment insurance because it replaces taxable wages. It's not unconstitutional for Oregon not to tax Social Security benefits but to tax unemployment benefits. It also not unconstitutional for Multnomah County not to tax social security or PERS benefits, but to tax unemployment benefits.

Equal protection of the laws as required by the Fourteenth Amendment or the Oregon privileges and immunities clause does not prevent the state of Oregon or Multnomah County from resorting to classifications for the purpose of legislation and they have a wide range of discretion. That latitude is notably wide in classifications for purposes of taxation: inequalities that result from singling out of one particular class for taxation or exemption infringe upon no constitutional limitations. *Huckaba v. Johnson*, 281 Or 23 (1978).

Consequently, the Administrator has determined that the Multnomah County personal income tax is constitutional and was properly adopted.

You have 30 days from the date of this letter to pay this billing or to file a written notice of appeal. If you file a written notice of appeal within the 30 days allowed by the administrative rules, you must then file a written statement with the facts and legal issues relating to your appeal to the Multnomah County Board of Commissioners within 90 days from the date of this letter. You may refer to "Your Right to Appeal" for information regarding the content of this statement or call the Help Desk at (503) 988-ITAX (4829) for any clarification.

Approved:

David A. Boyer
ITAX Administrator
Chief Financial Officer
Multnomah County, Oregon

Dated: April 20, 2005

503/537/satish

May 4, 2005

Notice of Appeal to Final letter of Determination:

RECEIVED
MAY 05 2005

This is a written notice appealing the final determination letter dated April 20, 2005 by the Administrator of the ITAX. This appeal is hereby presented to the Multnomah County Commissioners as of May 04, 2005.

This appeal comes from:

Thomas A. Turja
9124 N Wall
Portland, OR 97203
Account # 2648377387

Attached is a copy of the final determination dated April 20, 2005. On April 22, I made a similar appeal on my initial final letter of determination dated April 1, 2005. I had rejected that determination for not addressing my unemployment compensation issue, along with other content issues. I appealed to insure my 30-day deadline did not elapse.

Considering this subsequent final determination letter dated April 20, 2005, I ask the County Commission to identify which determination they want me to officially address?

Please mail a letter before May 22nd, as my earlier appeal requested (30 days from my original appeal dated April 22nd). If I do not receive a response from the County, I will use the original date of April 1, 2005 as the final letter of determination. This way no Multnomah County appeal rules will be misinterpreted.

Thank you in advance,

Tom

Tom

Ex
"Certified Copy"



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-5
Est. Start Time: 10:45 AM
Date Submitted: 09/08/05

BUDGET MODIFICATION: -

Agenda Title: Approve Changes to the 2004-2006 Labor Agreement Between Multnomah County and AFSCME Local 88 and Extend Contract One Year to June 30, 2007

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested: September 22, 2005 Time Requested: 15 Minutes
Department: Department of County Management Division: Human Resources
Contact(s): Carol Brown
Phone: 503-988-5135 Ext. 28387 I/O Address: 503/4
Presenter(s): Carol Brown, County Representative Becky Steward and Bryan Lally, Local 88 Representatives

General Information

1. What action are you requesting from the Board?

The Department of County Management recommends approval of changes to the labor agreement for employees of Multnomah County represented by AFSCME Local 88.

2. Please provide sufficient background information for the Board and the public to understand this issue.

The 2004-2006 Agreement provided for a re-opener of Article 14, Compensation. The parties have negotiated the following changes to the 2004-2006 Agreement:

Term of Agreement:

Extends current contract for one additional year. Effective upon execution by the parties through June 30, 2007.

Wages:

September 1, 2005: 3% Inflation adjustment.

July 1, 2006: 0.0025 (1/4 of 1%) of budgeted salary base for class/comp studies.

July 1, 2006: Inflation adjustment based on Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), for second half 2004 to second half 2005, with a minimum increase of 2% and a maximum increase of 4%.

Upon signing: Modify language on overpayments to limit recovery to 180 days in situations where the overpayment was not attributable to the employee and employee did not know and could not reasonably have known payment was in error.

3. Explain the fiscal impact (current year and ongoing).

Local 88 wages will be increased by 3% effective September 1, 2005. This translates to a 2.5% increase on an annualized basis. Departments were instructed to plan for a general wage increase in FY 05-06 so there is adequate funding in the budget to cover this wage settlement.

Including fringe and insurance benefits (estimated at 36.5% of base pay) this contract agreement will cost the County nearly \$156 million in the current fiscal year. That represents about a \$3.8 million increase in wages and fringe benefits over last year. This wage agreement covers nearly 3,000 employees who are represented by AFSCME/Local 88.

4. Explain any legal and/or policy issues involved.

5. Explain any citizen and/or other government participation that has or will take place.

Required Signatures

**Department/
Agency Director:**



Date: 09/12/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

ARTICLE 14
COMPENSATION

I. Wage Adjustments

A. July September 1, 2004 2005

Effective July September 1, 2004 2005 the rates and ranges of employees covered by this Agreement shall be increased three ~~two and three tenths~~ percent (3.0%). ~~(2.3%)~~ Employees covered by this Agreement shall be compensated in accordance with the wage schedule attached to this Agreement as Addendum A, Table I. Wage Rates Effective July September 1, 2004 2005 which by this reference is incorporated herein.

B. July 1, 2006

Effective July 1, 2006, the rates and ranges of employees covered by this Agreement shall be increased by the percentage increase in the CPI for Portland Urban Wage Earners and Clerical Workers Index for the second half 2004 to the second half 2005. The minimum percentage increase shall be no less than 2% and the maximum percentage increase no more than 4%.

II. Pay Periods

Employees shall be paid on a twice a month basis. The pay periods shall be the 1st through the 15th of each month and the 16th through the end of each month. Employees will be paid on the 15th of each month for hours worked during the second pay period of the preceding month, and on the last business day of each month for hours worked during the first pay period of that month; provided, however, that if either date falls on a Saturday, Sunday, or Holiday, the pay date will be the preceding business day.

III. Minimum Pay for Reporting to Work Outside of Regularly Scheduled Hours/Days

A. Reporting After Hours/Scheduled Day Off (Including Facilities Management Employees)

Any employee who returns to work at the direction of management outside his or her regularly scheduled working hours or on a scheduled day off, shall be paid for a minimum of four (4) hours at the straight time, time-and-a-half, or double time rate according to the provisions of "Section IV" below; provided that an employee who stays at work at the end of his or her scheduled work day or who begins his or her scheduled work day early shall not be eligible for this minimum. It is the understanding of the parties that the four-hour period for a Call-In commences with the acceptance of the call-in assignment and ends four (4) hours later.

B. Receiving Work Telephone Calls at Home

Any employee who is called at home or a location other than their job site for work related business during their off-duty time, and is not required to report to a work site, shall receive one (1) hour pay at the appropriate rate according to the provision of Section IV below. Multiple calls less than twenty (20) minutes between the end of the 1st and beginning of the 2nd (or more) calls will be considered one (1) call. This provision does not apply to telephone calls regarding work scheduling and or worksite directions.

C. Off Duty Telephone/Computer Work at Home

Any employee directed to perform work from home outside of their regular scheduled hours, will receive one (1) hour pay or the length of work whichever is greater, at the appropriate rate according to the provision of Section IV below.

D. Cancelled Court Appearance on Day Off.

When an employee is required to make a court appearance as a result of their job on his/her regularly scheduled day off, and such court appearance is cancelled and the employee is not notified of the cancellation by or on the employee's last scheduled work day prior to the scheduled court appearance, then the employee shall receive two (2) hours pay according to the provisions of Section IV below even though the court appearance was cancelled.

IV. Overtime

A. Time and One-Half

Employees will be compensated at the rate of one and one-half (1-1/2) times their normal hourly rate of pay for additional time worked as follows:

1. In excess of eight (8) hours in any work day for a five-day, forty-hour -a-week employee; or

2. In excess of ten (10) hours in any work day for a four-day, forty-hour -a-week employee; or

3. In excess of forty (40) hours in any FLSA work week.

B. Double Time

All work performed on an full-time employee's scheduled second or third day of rest will be paid at the rate of two (2) times the employee's regular rate of pay, provided that an employee who has refused to work a full shift on the employee's first scheduled day of rest will be paid at the rate of one-and-one-half (1 1/2) times his or her normal rate.

Part-time employees who work in excess of 48 hours in an employee's FLSA work week shall be compensated at the double rate for all such hours in excess of 48 hours.

C. Overtime Administration

1 1. **Computation of overtime - holidays and leaves**

2 When computing overtime, paid holidays and leaves with pay taken during
3 the work week shall be considered as time worked.

4 2. **Premium Pay in the Computation of Pay Rates**

5 When computing the overtime rate or vacation or sick leave pay due an
6 employee receiving premium pay, such premium pay must be included when the employee is
7 regularly assigned to premium work.

8 3. **Equal distribution of overtime work**

9 Overtime work shall be distributed as equally as practicable among
10 employees working within the same job classification within each work unit providing they have
11 indicated in writing a desire to work overtime to their supervisor.

12 4. **No discrimination**

13 There shall be no discrimination against any employee who declines to
14 work overtime. Overtime work shall be voluntary except in cases where the public health, safety
15 and welfare may be jeopardized.

16 5. **Discipline for unauthorized overtime**

17 Employees working unauthorized overtime may be subject to discipline.

18 6. **No suspending work to avoid overtime**

19 Employees shall not be required to suspend work during regular hours to
20 avoid overtime.

21 7. **Compensatory time**

22 Compensatory time may be accrued by agreement between the County
23 and the employee with the following limitations. Specifically, in lieu of overtime pay, an employee
24 may with supervisory approval elect to accrue compensatory time off equal to the applicable
25 overtime rate for each hour of overtime worked, provided:

- 26 • The maximum allowable accumulation of compensatory time off shall be eighty (80)
27 hours.
- 28 • Accrued compensatory time off may be used at the discretion of the employee with the
29 supervisor's consent.
- 30 • In the event the employee terminates for any reason, accrued compensatory time
31 shall be paid off in cash to the employee or his or her heirs.
- 32 • Flexibility during the work week made at the employee's request is not subject to this
33 section and is solely governed by Article 13, "Section V.B"

34 V. **Shift Differential**

1 **A. Payment of Shift Premiums**

2 **1. Hours and amounts**

3 The County and the Union recognize that a work week may contain three
4 different shifts: day, swing, and graveyard. The County agrees to pay the following shift premium
5 pay in addition to the established wage rate to employees who are scheduled to work eight or more
6 hours in a work day:

7 **a. Swing shift premium**

8 An hourly premium of seventy-five cents (\$.75) to employees for all
9 hours worked on shifts beginning between the hours of twelve (12) noon and seven (7) p.m.; or

10 **b. Graveyard shift premium**

11 An hourly premium of one dollar (\$1.00) to employees for all hours
12 worked on shifts beginning between the hours of seven (7) p.m. and six (6) a.m., provided that the
13 employee was not called in early to a shift normally scheduled to begin after six (6) a.m.; or

14 **c. Relief shift premium**

15 An hourly premium of one dollar (\$1.00) to employees for all hours
16 worked in the work week while assigned to a relief shift.

17 **2. Definition of relief shift**

18 A relief shift occurs when an employee's work week does not contain-four
19 (4) like shifts, i.e., four (4) day shifts; four (4) swing shifts; or four (4) graveyard shifts. Employees
20 assigned to a relief shift schedule are exempt from the provisions of Article 13, "Section I";
21 however, such employees must be given at least a twenty-four (24) hour notice of shift assignment.

22 **B. Inclusion of Shift Differentials in Wages**

23 **1. Inclusion in overtime rate**

24 When computing the overtime rate due an employee receiving shift
25 differential pay, such pay must be included in the overtime rate.

26 **2. Inclusion in sick and vacation pay**

27 Shift differentials shall continue to apply to all hours paid including sick
28 leave or vacation hours if they occur during the employee's normally scheduled shift.

29 **3. Shift pay disallowed for voluntary single shift change**

30 Employees are not entitled to shift differential pay for a single shift change
31 that is done at the request of and for the benefit of the employee.

32 **VI. Auto Allowance and Compensation**

33 Auto allowance and compensation shall be paid pursuant to Addendum E.

34 **VII. Deferred Compensation Plan**

1 Subject to applicable federal regulations, the County agrees to provide a deferred
2 compensation plan that provides for payment at a future date for services currently rendered by the
3 eligible employee.

4 **VIII. Overpayments and Payments in Violation of Contract**

5 Any employee receiving unauthorized payments has the obligation to call such error to the
6 attention of his or her supervisor.

7 **A. Unauthorized Overpayments**

8 Any employee who receives payments to which he or she is not entitled, including
9 but not limited to premium pay, shift differential, overtime pay, step increases, or any
10 other salary, wage, or reimbursement which is not authorized by this contract or County
11 Personnel Rules, and which the employee knew or reasonably should have known he or
12 she was not entitled to receive, shall reimburse the county for the full amount of the
13 overpayment.

14 **B. Payments in Error**

15 When an employee receives payments due to a clerical, technical, or computer
16 error, through no fault of the employee and where the employee did not and could not
17 reasonably have known that the error occurred, the employee will only be liable for and
18 the County shall only recover the overpayment for a period of 180 days preceding the date
19 of discovery of the error.

20 **C. Repayment to the County**

21 As soon as the overpayment is known, the County will make every effort to recover such
22 overpayments as specified in subsections A. or B above, by payroll deduction over a
23 reasonable period of time as determined by the ~~Labor Relations Manager~~ County Human
24 Resources Director.

25 **D. Repayment to the Employee**

26 Where an error occurs which results in a negative impact on the employee, upon
27 notification by the employee, and verification by the payroll division, payment in correction of the
28 error shall be made in the employee's paycheck for the current pay period.

29 **IX. On-Call Pay**

30 On-Call duty assignments

31 **A. Voluntary On-Call**

32 Employees on a regular work schedule may volunteer to be placed on-call duty
33 beyond their regularly scheduled work day or work week and may be assigned an answering

1 device for on-call purposes to avail themselves of the opportunity to receive additional pay. Any
2 such employee on voluntary on-call status may refuse to report if called.

3 **B. Involuntary On-call (FLSA Exempt)**

4 Any employee determined by the Department Human Resources Manager to be
5 FLSA exempt may be placed on involuntary on-call status. Any such employee shall be allowed
6 compensatory time off at the rate of one (1) hour for each eight (8) hour period they are on-call
7 status. Employees who are assigned on-call duty for less than eight (8) hours shall be allowed
8 compensatory time off on a pro-rated basis at full hour increments.

9 An employee shall be assigned on-call duty when specifically required to be
10 available for work outside his/her working hours and not subject to restrictions which would prevent
11 the employee from using the time while on-call effectively for the employee's own purposes.

12 No employee is eligible for any premium pay compensation while on-call duty
13 except as expressly stated in this article. On-call duty time shall not be counted as time worked in
14 the computation of overtime hours. An employee shall not be on-call duty once he/she actually
15 commences performing assigned duties and receives the appropriate rate of pay for time worked.

16 **C. Involuntary On-Call (FLSA Non-exempt)**

17 Employees shall be paid one (1) hour of pay or compensatory time off subject to
18 Section IV.C.7 at the regular straight time rate for each eight (8) hours of assigned on-call duty.
19 Employees who are assigned on-call duty for less than eight (8) hours shall be paid on a pro-rated
20 basis at full hour increments.

21 An employee shall be assigned on-call duty when specifically required to be
22 available for work outside his/her working hours and not subject to restrictions which would prevent
23 the employee from using the time while on-call effectively for the employee's own purposes.

24 No employee is eligible for any premium pay compensation while on-call duty
25 except as expressly stated in this article. On-call duty time shall not be counted as time worked in
26 the computation of overtime hours. An employee shall not be on-call duty once he/she actually
27 commences performing assigned duties and receives the appropriate rate of pay for time worked.

28 **X. Market and Equity Adjustment Fund and Process**

29 There is a joint understanding by the parties that market forces during the last decade
30 have had a variable effect on the relative market standing of many of the classifications in the
31 bargaining unit. It is further recognized that independent in whole or part from market issues, there
32 exist a certain number of anomalies and equity issues within the compensation system. To
33 address these anomalies and equity issues of the County compensation system, the parties agree
34 to a classification and compensation system review of classifications through a joint

1 labor/management committee.

2 **A. Joint Labor Management Compensation Committee (the Compensation**
3 **Committee)**

4 There shall be established a Joint Labor Management Compensation Committee
5 to review mutually agreed upon classifications for the purpose of compensation adjustments and
6 classification review that may include updating job descriptions. The composition of this committee
7 will include but may be supplemented or changed by mutual agreement:

8 **1. County**

9 Two representatives from Human Resources, one from Labor Relations
10 and two departmental management representatives. The Chief Spokesperson for the County shall
11 be designated by the ~~Director of Support Services~~ **County Human Resources Director**

12 **2. Union**

13 The Union Representative and four appointed bargaining unit employees.

14 **B. July 1, 2004 2005- May 1, 2005 2006 and July 1, 2005 2006 Increases.**

15 During the period July 1, 2004 **2005** – May 1, 2005 **2006**, the committee will
16 identify job families or isolated classifications which would appear to be candidates for closer
17 study based on such specifiable factors as recruitment data, internal alignment data or other
18 factors as mutually agreed by the members of the committee. Based on the classifications
19 identified by the committee to be reviewed, a formal salary survey and classification review will be
20 performed by the County on the classifications identified by the committee. The data resulting from
21 this survey, the funding limitations provided by "Section"E", below, will lead to a County
22 recommendation for increases for effective July 1, 2005 **2006**. The recommendations will be
23 presented to the Union as completed or no later than May 1, 2005 **2006**. Unless mutually agreed
24 between the County and Union, all such increases will be in fixed "across the board" percentage
25 terms of the June 30, 2005 **2006** rates and ranges for the affected classifications, although the
26 amount of the percentage increases will vary, or may be 0%, depending on the strategy and
27 priorities of the study. For example, the study may recommend a 2% increase on the June 30
28 rates for a certain classification; this combined with the percentage increase resulting from
29 application of the CPI provision of "Section I" of this article would result in the total percentage
30 increase on the June 30 rates for that classification. The County Recommendation for 2005 **2006**
31 will be implemented unless modified by mutual agreement during the Committee discussion, or
32 unless the Union notifies the County in writing within 30 days of a recommendation or no later than
33 June 1, 2005 **2006** that the County Recommendation is rejected, in which case the Default Option
34 cited in "Section D" below will be implemented.

ARTICLE 14, COMPENSATION

1 **C. Funding and Amount of Increase**

2 **1. May 2005 2006**

3 The amount of funding available for the May 1, ~~2006~~ 2005 County
4 Recommendation shall be zero. ~~no more than one-half (.5%) of one percent of the budgeted base~~
5 ~~for all positions allocated to this bargaining unit as calculated by the Budget Manager from the~~
6 ~~Approved Budget for FY 2004 — 2005, not including any CPI increase for July 1, 2004. Costing~~
7 ~~calculations against this amount will default to Step 1 for all vacancies.~~ **Funding not used by**
8 **June 30, 2005 shall be carried over to be available for July 1, 2005.**

9 **2. July 1, 2006 - June 30, 2007**

10 The amount of funding available for the July 1, 2006 County
11 Recommendation shall be one-quarter of one percent (.25%) of the budgeted base for all
12 positions allocated to this bargaining unit as calculated by the Budget Manager from the
13 Approved FY 2006-2007 Budget, not including any CPI increase. Costing calculations
14 against this amount will default to Step 1 for all vacancies. ~~—negotiated with the 2005-2006~~
15 ~~reopener. Funding not used July 1, 2005 shall by mutual agreement be carried over to be available~~
16 ~~January 1, 2006.~~

17 **D. Default Option**

18 The Union and the County realize that the existing compensation arrangements
19 are jointly owned as a product of a series of contracts that have been freely entered into. There is
20 also a joint recognition that any process such as the above which is not, and cannot be, precisely
21 specified in advance, must involve a concerted effort of discussion to be successful, and must be
22 disciplined by a default option; therefore:

23 If the County Recommendations effective for July 1, 2005 ~~2006~~, are rejected, the
24 County's obligation shall be void with respect to this entire plan except that the CPI increase
25 provided for in "Section I.D" above shall be increased by adding one quarter of one percent (.25%)
26 to the percentage increase resulting from the CPI formula as adjusted.

27 **XI. Waiver of State Overtime Requirements**

28 To the extent allowable by law, the provisions of this Article and other provisions of this
29 Agreement constitute an express waiver of ORS 279.340 as provided by ORS 279.342 (5)(b).
30 Copies of the above cited statutes are available upon employee request to the Labor Relations
31 Section.

32 **XII. Bilingual pay**

33 A differential of four percent (4%) over base rate will be paid to employees in positions
34 which specifically require, and who have been directed to translate to and from English to

1 another language (including the use of sign language), as a condition of employment. The
2 proficiency level for interpretation and translation skills will be assigned by management and
3 contained in an employee's individual position description.

4 ~~Effective July 1, 2004 a joint labor-management bilingual pay committee will be created~~
5 ~~with 5 members from the union, appointed by the Local President, and 5 members from~~
6 ~~management. The committee will develop guidelines for determining bilingual positions; define~~
7 ~~interpretation and translation skills and research cost neutral ways to assist employees who~~
8 ~~want to develop language skills. The Committee will submit its recommendations to the~~
9 ~~bargaining team no later than April 1, 2005.~~

1
2 **ARTICLE 27**
3 **TERMINATION**

4
5 This Agreement shall be effective as of the First day of July, 2001, 2005, unless
6 otherwise provided herein, and shall remain in full force and effect through the 30th day
7 of June, 2004, 2007 and shall be automatically renewed from year-to-year thereafter,
8 unless either party shall notify the other in writing no later than January 31, 2004, 2007
9 that it wishes to modify the contract for any reason. The contract shall remain in full
10 force and effect during the period of negotiations.



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-6
Est. Start Time: 11:00 AM
Date Submitted: 09/07/05

Agenda Title: **RESOLUTION Requiring Comcast Corporation to Activate the Ninth Access Channel**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested:	<u>September 22, 2005</u>	Time Requested:	<u>15 minutes</u>
Department:	<u>Non-Departmental</u>	Division:	<u>Commission District 2</u>
Contact(s):	<u>Andrea Cano, MHCRC County Rep (503) 731-8874 or Serena Cruz, Commissioner District 2</u>		
Phone:	<u>503-988-5219</u>	Ext.:	<u>I/O Address: 503/600</u>
Presenter(s):	<u>Julie S. Omelchuck, Program Mgr, MHCRC and Andrea Cano, MHCRC County Rep</u>		

General Information

1. What action are you requesting from the Board?

Approve resolution requiring Comcast Corporation to activate the ninth access channel.

2. Please provide sufficient background information for the Board and the public to understand this issue.

The Mt. Hood Cable Regulatory Commission (MHCRC) was created by intergovernmental agreement to carry out cable regulation and administration on behalf of Multnomah County and the Cities of Portland, Gresham, Troutdale, Fairview and Wood Village (Jurisdictions). Among other things, the MHCRC acts in an advisory capacity to the Jurisdictions.

At its regular monthly meeting on June 20, 2005, the MHCRC unanimously approved Resolution 2005-04 recommending that its member Jurisdictions (the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village and Multnomah County) require Comcast to activate the reserved access channel for use by Multnomah Community Television and Portland Community Media (access providers).

The franchises, administered by the MHCRC on behalf of Multnomah County, include a process by which the County Commission can require Comcast to activate access channels up to a total of nine channels based on the access providers meeting certain channel usage criteria contained in the franchises. Eight access channels are currently activated throughout the franchise areas.

The MHCRC has determined that the access providers have met the access channel usage criteria and recommends that the County Commission direct Comcast to activate the remaining channel. The MHCRC is proposing similar actions by the City Councils of Fairview, Gresham, Portland, Troutdale and Wood Village.

The access providers plan to use the channel to provide subscribers with a program guide – program titles, dates and times - for local community programming. Along with MCTV and PCM, Portland Public Schools and Portland Community College also plan to use the “access program guide” channel to include information about their local educational TV programming. Many other communities across the country have implemented such access program guide channels with great success.

Currently, Comcast’s program guide channel (Channel 4) includes a generic channel identifier for the eight locally programmed access channels. For example, instead of listing a title and time for each program, a generic listing of “Public Access Information” or “Educational Access” will appear.

The access providers’ program guide channel will provide increased access to information and greater awareness to area residents about what’s going on in the community. The channel will include opportunities to visually promote, with video clips and other graphics, community events and specific programming like County Commission meetings and Senior Showcase. In addition, the channel guide will enable subscribers to view an access channel’s program schedule for at least six hours of programming (or more) and can include narrative description of programs, instead of only program titles. Other local information can also be posted like weather, hazard warnings, alerts and announcements.

PROCESS

Since November 2003, the MHCRC staff and the access providers have been discussing with Comcast some ideas and options about listing of access programs on Comcast’s program guide channel for all the access channels. Those discussions also included access providers and regulatory agencies from Washington, Clackamas and Clark counties. None resulted in a plan for specific access program listings on Comcast’s programming guide channel that was agreeable or affordable to all parties. The franchises do not provide any regulatory authority to require Comcast to include access program listings on its TV guide channel.

June 2004: The MHCRC’s Access Committee discussed issues related to having local community programming listed on Comcast’s programming guide channel. The Committee meeting was publicly noticed, with a meeting agenda mailed to Comcast. Comcast did not attend the meeting.

January 2005: MHCRC staff and the access providers met with Comcast to discuss access program listings. At that meeting, the access providers informed Comcast that they intended to request activation of the reserved ninth access channel.

February 2005: The Access Committee directed staff to pursue the option to activate the ninth access channel. The Committee meeting was publicly noticed, with a meeting agenda mailed to Comcast. Comcast did not attend the meeting.

May 20, 2005: As is required under the Franchises, the MHCRC notified Comcast of the access providers' request to activate the reserved ninth channel as a public access channel and of the intent for the MHCRC Access Committee to address the issue at its June meeting. The Committee agenda provided time for Comcast to comment.

June 10, 2005: The Access Committee met to consider a staff recommendation to activate the ninth access channel based on staff's analysis of the access providers' documentation that they had met the access channel usage criteria. A Comcast representative verbally noted Comcast's concerns about activating another access channel. The first concern was regarding the definition of "Programming" under the franchises and whether or not a local community programming guide was an appropriate use of an access channel. The second concern pertained to Comcast's stated possibility that it might have to move or delete a current programming service in order to accommodate another access channel within the basic service lineup. Comcast's view was that subscribers would prefer the current programming offered on the basic tier channels over a local community programming guide. The MHCRC's Access Committee considered the information provided by Comcast and the access providers. The Committee determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed.

June 20, 2005: The MHCRC considered the Access Committee's recommendation and Comcast's concerns. The MHCRC determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed. In response to Comcast's concerns, the MHCRC noted that both Comcast's issues could or would be addressed during the implementation phase of channel activation, which could take up to six months. Comcast agreed at the meeting that the access providers had met the channel usage criteria for activating the ninth channel. Therefore, the Commission did not have any basis to deny the access providers' request.

Based on these determinations, the MHCRC recommended that its member jurisdictions require Comcast to activate the reserved channel for public access use by the access providers, pursuant to MHCRC Resolution No. 2005-04, passed by the MHCRC June 20, 2005. The resolution was transmitted to Comcast by letter dated June 22, 2005.

COMCAST'S CONCERNS/ MHCRC STAFF ANALYSIS

Comcast's concerns as stated to the MHCRC included: 1) whether or not the intended future use of the activated channel (access programming guide) would meet the definition of "Programming" under the franchises; and 2) the Company would need to remove a current basic tier program service in order to accommodate a new access channel.

Pertaining to Comcast's first concern regarding franchise definitions, MHCRC staff and legal counsel believe that the franchises do not prohibit using an access channel to provide programming information. In fact, the franchises remove the Company from any content control over the access channels. In addition, the access providers, historically and currently, use the access channels to provide "community bulletin board" type information and the Company has never objected to this programming.

Pertaining to Comcast's second concern about having to remove a programming service to accommodate a new access channel, the MHCRC noted at its meeting that the Company, under the franchises, was to "reserve" channel capacity for up to nine access channels. With the exception of

access channels, the franchises do not dictate Comcast's program or channel placement decisions. Therefore, Comcast has full authority about where to place the new access channel in its basic tier lineup and which programming service it may or may not need to move or delete. Staff believes there are options for channel placement within Comcast's basic tier without having to remove a current programming service but, again, that is Comcast's decision to make. At the MHCRC meeting, Comcast stated that the Company would make this decision during the implementation phase and not until it was required to activate a channel.

3. Explain the fiscal impact (current year and ongoing).

None

4. Explain any legal and/or policy issues involved.

None

5. Explain any citizen and/or other government participation that has or will take place.

MHCRC adopted Res. 2005-04 recommending the activation of the 9th access channel. Under the IGA all jurisdictions must consent.

Required Signatures

**Department/
Agency Director:**



Date: 09/12/05

Budget Analyst:

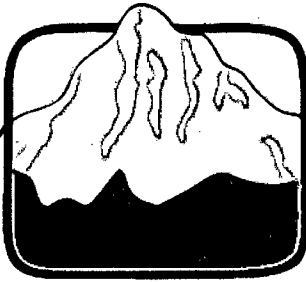
Date:

Department HR:

Date:

Countywide HR:

Date:



MT. HOOD CABLE REGULATORY COMMISSION

1120 SW Fifth Ave. #1305 • Portland, OR 97204

Phone: (503) 823-5385 • Fax (503) 823-5370

Email: www.mhcrc.org

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

MEMORANDUM

Date: September 9, 2005

To: Serena Cruz, County Commissioner

From: Andrea Cano, Multnomah County MHCRC Representative

Re: Resolution requiring Comcast to activate the Ninth Access Channel

.....

The Multnomah County Commission will consider a recommendation from the Mt. Hood Cable Regulatory Commission (MHCRC) at your September 22, 2005, meeting. I am sending you this memo, as your representative on the MHCRC, in order to provide additional background information. Please feel free to contact MHCRC staff or me, (503) 731-8874, if you have any questions or need further information.

At its regular monthly meeting on June 20, 2005, the MHCRC unanimously approved Resolution 2005-04 (attached) recommending that its member Jurisdictions (the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village and Multnomah County) require Comcast to activate the reserved access channel for use by Multnomah Community Television and Portland Community Media (access providers).

The franchises, administered by the MHCRC on behalf of Multnomah County, include a process by which the County Commission can require Comcast to activate access channels up to a total of nine channels based on the access providers meeting certain channel usage criteria contained in the franchises. Eight access channels are currently activated throughout the franchise areas.

The MHCRC has determined that the access providers have met the access channel usage criteria and recommends that the County Commission direct Comcast to activate the remaining channel. The MHCRC is proposing similar actions by the City Councils of Fairview, Gresham, Portland, Troutdale and Wood Village.

The access providers plan to use the channel to provide subscribers with a program guide – program titles, dates and times - for local community programming. Along with MCTV and PCM, Portland Public Schools and Portland Community College also plan to use the “access program guide” channel to include information about their local educational TV programming. Many other communities across the country have implemented such access program guide channels with great success.

Currently, Comcast's program guide channel (Channel 4) includes a generic channel identifier for the eight locally programmed access channels. For example, instead of listing a title and time for each program, a generic listing of "Public Access Information" or "Educational Access" will appear.

The access providers' program guide channel will provide increased access to information and greater awareness to area residents about what's going on in the community. The channel will include opportunities to visually promote, with video clips and other graphics, community events and specific programming like County Commission meetings and Senior Showcase. In addition, the channel guide will enable subscribers to view an access channel's program schedule for at least six hours of programming (or more) and can include narrative description of programs, instead of only program titles. Other local information can also be posted like weather, hazard warnings, alerts and announcements.

PROCESS

Since November 2003, the MHCRC staff and the access providers have been discussing with Comcast some ideas and options about listing of access programs on Comcast's program guide channel for all the access channels. Those discussions also included access providers and regulatory agencies from Washington, Clackamas and Clark counties. None resulted in a plan for specific access program listings on Comcast's programming guide channel that was agreeable or affordable to all parties. The franchises do not provide any regulatory authority to require Comcast to include access program listings on its TV guide channel.

June 2004: The MHCRC's Access Committee discussed issues related to having local community programming listed on Comcast's programming guide channel. The Committee meeting was publicly noticed, with a meeting agenda mailed to Comcast. Comcast did not attend the meeting.

January 2005: MHCRC staff and the access providers met with Comcast to discuss access program listings. At that meeting, the access providers informed Comcast that they intended to request activation of the reserved ninth access channel.

February 2005: The Access Committee directed staff to pursue the option to activate the ninth access channel. The Committee meeting was publicly noticed, with a meeting agenda mailed to Comcast. Comcast did not attend the meeting.

May 20, 2005: As is required under the Franchises, the MHCRC notified Comcast of the access providers' request to activate the reserved ninth channel as a public access channel and of the intent for the MHCRC Access Committee to address the issue at its June meeting. The Committee agenda provided time for Comcast to comment.

June 10, 2005: The Access Committee met to consider a staff recommendation to activate the ninth access channel based on staff's analysis of the access providers' documentation that they had met the access channel usage criteria. A Comcast representative verbally

noted Comcast's concerns about activating another access channel. The first concern was regarding the definition of "Programming" under the franchises and whether or not a local community programming guide was an appropriate use of an access channel. The second concern pertained to Comcast's stated possibility that it might have to move or delete a current programming service in order to accommodate another access channel within the basic service lineup. Comcast's view was that subscribers would prefer the current programming offered on the basic tier channels over a local community programming guide. The MHCRC's Access Committee considered the information provided by Comcast and the access providers. The Committee determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed.

June 20, 2005: The MHCRC considered the Access Committee's recommendation and Comcast's concerns. The MHCRC determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed. In response to Comcast's concerns, the MHCRC noted that both Comcast's issues could or would be addressed during the implementation phase of channel activation, which could take up to six months. Comcast agreed at the meeting that the access providers had met the channel usage criteria for activating the ninth channel. Therefore, the Commission did not have any basis to deny the access providers' request.

Based on these determinations, the MHCRC recommended that its member jurisdictions require Comcast to activate the reserved channel for public access use by the access providers, pursuant to MHCRC Resolution No. 2005-04, passed by the MHCRC June 20, 2005. The resolution was transmitted to Comcast by letter dated June 22, 2005.

August 2005: The MHCRC staff began the process to file action items on its six member jurisdictions' agendas for consideration of the MHCRC's recommendation.

August 25, 2005: The MHCRC Access Committee Chair and staff received a proposal from Comcast via email regarding its willingness to purchase capital equipment necessary to include access programming in Comcast's TV Guide channel in exchange for the jurisdictions and the access providers giving up any rights to activate the ninth access channel through the term of the franchise (about five years). The proposal included the access providers paying a monthly fee to Comcast for inclusion of the access program listings.

August 27, 2005: After consultation with the Access Committee Chair, staff changed the dates for jurisdictional consideration of the MHCRC recommendation until after the MHCRC's September meeting. The Committee Chair scheduled an emergency meeting, in consultation with the Comcast representative's availability, in order for the Access Committee to consider Comcast's proposal.

September 6, 2005: The Access Committee met with Comcast and the access providers. After much discussion, the Committee voted to continue the scheduled actions on the jurisdictional meeting agendas and directed staff to work with Comcast and the access

providers to see if an alternative proposal could be agreed upon prior to the September MHCRC meeting (September 19). If no acceptable alternative was agreed upon by the MHCRC at the meeting, the MHCRC would move forward with its recommendation to activate the access channel.

COMCAST'S CONCERNS/ STAFF ANALYSIS

Comcast's concerns as stated to the MHCRC included: 1) whether or not the intended future use of the activated channel (access programming guide) would meet the definition of "Programming" under the franchises; and 2) the Company would need to remove a current basic tier program service in order to accommodate a new access channel.

Pertaining to Comcast's first concern regarding franchise definitions, MHCRC staff and legal counsel believe that the franchises do not prohibit using an access channel to provide programming information. In fact, the franchises remove the Company from any content control over the access channels. In addition, the access providers, historically and currently, use the access channels to provide "community bulletin board" type information and the Company has never objected to this programming.

Pertaining to Comcast's second concern about having to remove a programming service to accommodate a new access channel, the MHCRC noted at its meeting that the Company, under the franchises, was to "reserve" channel capacity for up to nine access channels. With the exception of access channels, the franchises do not dictate Comcast's program or channel placement decisions. Therefore, Comcast has full authority about where to place the new access channel in its basic tier lineup and which programming service it may or may not need to move or delete. Staff believes there are options for channel placement within Comcast's basic tier without having to remove a current programming service but, again, that is Comcast's decision to make. At the MHCRC meeting, Comcast stated that the Company would make this decision during the implementation phase and not until it was required to activate a channel.

Attachment: MHCRC Res. 2005-04

Cc: Diane Linn, Commission Chair
Maria Rojo de Steffey, Commissioner
Lisa Naito, Commissioner
Lonnie Roberts, Commissioner
Deb Bogstad, Board Clerk
Carol Kinoshita/Agnes Sowle, City Attorneys

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Requiring Comcast Corporation to Activate the Ninth Access Channel

The Multnomah County Board of Commissioners Finds:

- a. The County has a cable services franchise agreement with KBL Multnomah Cablesystems. The County approved an ownership transfer of the franchise agreement to Comcast Corporation effective June 13, 2002.
- b. The Mt. Hood Cable Regulatory Commission ("MHCRC") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to administer and enforce cable services franchise agreements on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village ("the Jurisdictions"). Among other things, the MHCRC acts in an advisory capacity to the Jurisdictions in connection with Franchise requirements to activate additional public, education and government ("PEG") access channels.
- c. The franchises administered by the MHCRC include a process by which the Jurisdictions can require Comcast to activate access channels up to a total of nine channels. Eight access channels are currently activated throughout the franchise areas.
- d. Under the franchises, Comcast must reserve additional access channel capacity to allow for activation of a ninth channel for PEG Access use. The Jurisdictions may require Comcast to activate the additional channel capacity after receiving a recommendation from the MHCRC determining a need for additional capacity as established under the franchise criteria. The franchises provide that the MHCRC may recommend activation of the additional channel capacity after giving Comcast notice and an opportunity to be heard and considering such information as may be provided by Comcast.
- e. The MHCRC staff provided Comcast by letter dated May 20, 2005, a request from Multnomah Community Television (MCTV), ("Access Provider") to activate the reserved ninth channel as a public access channel. The letter also notified Comcast that the MHCRC's Access Committee would be considering the request at its meeting on June 10, 2005, and provided agenda time for Comcast to be heard.
- f. The MHCRC's Access Committee met on June 10, 2005, and considered the documentation provided by the Access Provider about access channel usage and verbal information provided by a Comcast representative regarding the definition of "Programming" under the franchises and subscriber programming preferences. The Committee determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed. The Committee recommended that the MHCRC forward a recommendation to the Jurisdictions requiring Comcast to activate the reserved channel for public access use by the Access Provider based on the determination that the channel usage criteria had been met.

- g. MHCRC staff notified Comcast that the Access Committee's recommendation would be considered by the MHCRC at its meeting on June 20, 2005.
- h. At its June 20 meeting, the MHCRC considered the Access Committee's recommendation and analyzed the documentation provided by the Access Provider about public access channel usage as it related to the access channel activation criteria in the franchises. The MHCRC also considered information provided verbally by a Comcast representative who attended the meeting.
- i. The MHCRC determined that the public access channel usage criteria under the franchises had been met and, therefore, that the additional public access channel was needed. Based on this determination, the MHCRC recommended that the Jurisdictions require Comcast to activate the reserved channel for public access use by the Access Provider, pursuant to MHCRC Resolution No. 2005-04, passed on June 20, 2005. The resolution was sent to Comcast by letter dated June 22, 2005. A copy of MHCRC Resolution No. 2005-04 is attached as Exhibit A.

The Multnomah County Board of Commissioners Resolves:

- 1. The County determines that the Access Provider has met the franchise criteria as applicable to activation of a public access channel, based on the Providers' documentation about current use of the public access channels for locally-scheduled, original programming.
- 2. The County requires Comcast to activate the reserved public access channel for use by the Access Provider as provided for in Comcast's cable services franchise agreement with the County.

ADOPTED this 22nd day of September 2005.

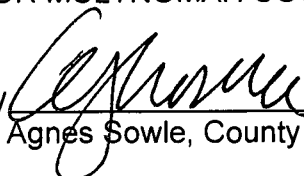
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By



Agnes Sowle, County Attorney

Exhibit A to Resolution Requiring Comcast Corporation to Activate the Ninth Access Channel

**Before the Mt. Hood Cable Regulatory Commission
1211 SW Fifth Avenue, Room 1305
Portland, OR 97204**

Recommending That the Jurisdictions Require)
Comcast To Activate the Ninth Access Channel)

Resolution No. 2005-04
Adopted: June 20, 2005

Section 1. Findings.

- 1.1 The Mt. Hood Cable Regulatory Commission ("Commission" or "MHCRC") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village ("the Jurisdictions"). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with Franchise requirements to activate additional public, education and government ("PEG") access channels.
- 1.2 Each franchise administered by the Mt. Hood Cable Regulatory Commission includes a process by which the Jurisdictions can require the cable company to activate access channels up to a total of nine channels. Eight access channels are currently activated throughout the franchise area. The franchises include: KBL Multnomah Cablesystems, LP., and the East County cities and Multnomah County; KBL Portland Cablesystems, LP., and the City of Portland; and TCI Cablevision of Oregon and the City of Portland. The Jurisdictions approved an ownership transfer of these franchise agreements to Comcast Corporation effective June 13, 2002.
- 1.3 Under the franchises, Comcast must reserve additional access channel capacity so that there are a total of nine channels for PEG Access use. The city councils and County Commission may require Comcast to activate access channel capacity after receiving a recommendation from the Commission regarding the need for additional capacity as established under the franchise criteria. The Commission is to develop such recommendation after giving Comcast notice and an opportunity to be heard and considering such information as may be provided by Comcast.
- 1.4 The Commission staff notified Comcast on May 20, 2005, that the Access Committee would be considering a request from Portland Community Media (PCM) and Multnomah Community Television (MCTV), ("Access Providers"), to activate the reserved ninth channel as a public access channel. Staff informed Comcast that the Committee would consider the request at a meeting on June 10, 2005 and invited Comcast to include information in the Committee meeting packet. The Committee Chair included time on the agenda for Comcast to be heard. In addition, in the May 20 notice, Commission staff noted that if the Access Committee moved forward a recommendation to the full Commission, the Committee's recommendation would be considered at the June 20, 2005, Commission meeting, at which time Comcast would be provided time on the Commission meeting agenda to be heard.

Exhibit A to Resolution Requiring Comcast Corporation to Activate the Ninth Access Channel

- 1.5 The Commission's Access Committee met on June 10, 2005, and considered the request by the Access Providers to activate the ninth channel as a public access channel. The Committee considered the documentation provided by the Access Providers about access channel usage and verbal information provided by Comcast regarding the definition of "Programming" under the franchises and subscriber programming preferences. The Committee received information from a representative of Comcast who attended the meeting. The Committee determined that the public access channel usage criteria under the franchises have been met and, therefore, that the additional public access channel is needed. The Committee recommended that the Commission forward a recommendation to the Jurisdictions requiring Comcast to activate the reserved channel for public access use by the Access Providers based on the determination that the channel usage criteria have been met.
- 1.6 Commission staff notified Comcast that the Access Committee's recommendation would be considered by the Commission at its meeting on June 20, 2005.
- 1.7 The Commission has considered the Access Committee's recommendation. The Commission analyzed the documentation provided by the Access Providers about public access channel usage as it related to the access channel activation criteria in the franchises. The Commission also considered information provided by Comcast.

Section 2. NOW, THEREFORE THE COMMISSION RESOLVES:

- 2.1 The Commission determines that the Access Providers have met the franchise criteria as applicable to activation of a public access channel, based on the Providers' documentation about use of the public access channels for locally-scheduled, original programming.
- 2.2 The Commission recommends that the Jurisdictions require Comcast to activate the reserved access channel for public access use by the Access Providers.

ADOPTED BY THE COMMISSION on June 20, 2005.

R. C. Goheen, Chair

Reviewed by:

Benjamin Walters, Legal Counsel

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Tuesday, September 20, 2005 9:40 AM
To: 'Omelchuck, Julie'; CRUZ Serena M
Cc: CARROLL Mary P; KINOSHITA Carol; Gibbons, Rebecca
Subject: RE: Removal of Sept. 22 MHCRC agenda item

We'll take care of it. Thank you for the heads up, Julie. Nice to see you yesterday!

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>

-----Original Message-----

From: Omelchuck, Julie [mailto:julieo@ci.portland.or.us]
Sent: Tuesday, September 20, 2005 9:34 AM
To: CRUZ Serena M
Cc: CARROLL Mary P; KINOSHITA Carol; BOGSTAD Deborah L; Gibbons, Rebecca
Subject: Removal of Sept. 22 MHCRC agenda item
Importance: High

The MHCRC requests that you remove the MHCRC's agenda item from the Multnomah County Commission meeting agenda for September 22. At its meeting last night, the MHCRC approved provisions of an agreement with Comcast regarding an alternative to the proposed Resolution to activate the reserved ninth access channel. Therefore, action by the MHCRC member Jurisdictions is not necessary at this time.

The MHCRC appreciates your support and attention paid to this issue. The MHCRC believes the results of the agreement with Comcast will benefit the community's access to local programming, like the Multnomah County Commission meetings. Please contact us if you need us to do anything further to remove the agenda item. Also, as always, feel free to contact us if you have any questions or need further information.

Andrea Cano
Multnomah County MHCRC Representative
503.731.8874

Julie S. Omelchuck
Cable Program Manager
Mt. Hood Cable Regulatory Commission
503.823.4188

BOGSTAD Deborah L

From: BOGSTAD Deborah L
Sent: Tuesday, September 20, 2005 9:39 AM
To: SOWLE Agnes; Diane Linn; Lisa Naito; Lonnie Roberts; Maria ROJO DE STEFFEY; Serena Cruz
Subject: FW: Removal of Sept. 22 MHCRC agenda item
Importance: High

See MHCRC's explanation below regarding R-6 on Thursday's agenda, the script will be as follows:

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
TO POSTPONE R-6 INDEFINITELY**

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

THE RESOLUTION IS POSTPONED INDEFINITELY

**Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>**

-----Original Message-----

From: Omelchuck, Julie [mailto:julieo@ci.portland.or.us]
Sent: Tuesday, September 20, 2005 9:34 AM
To: CRUZ Serena M
Cc: CARROLL Mary P; KINOSHITA Carol; BOGSTAD Deborah L; Gibbons, Rebecca
Subject: Removal of Sept. 22 MHCRC agenda item
Importance: High

The MHCRC requests that you remove the MHCRC's agenda item from the Multnomah County Commission meeting agenda for September 22. At its meeting last night, the MHCRC approved provisions of an agreement with Comcast regarding an alternative to the proposed Resolution to activate the reserved ninth access channel. Therefore, action by the MHCRC member Jurisdictions is not necessary at this time.

The MHCRC appreciates your support and attention paid to this issue. The MHCRC believes the results of the agreement with Comcast will benefit the community's access to local programming, like the Multnomah County Commission meetings. Please contact us if you need us to do anything further to remove the agenda item. Also, as always, feel free to contact us if you have any questions or need further information.

Andrea Cano
Multnomah County MHCRC Representative
503.731.8874

9/20/2005

Julie S. Omelchuck
Cable Program Manager
Mt. Hood Cable Regulatory Commission
503.823.4188



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-7
Est. Start Time: 11:05 AM
Date Submitted: 09/13/05

BUDGET MODIFICATION: -

Agenda Title: RESOLUTION Authorizing Participation in a Joint City of Portland and Multnomah County Public Safety System Planning and Budget Process

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested:	September 22, 2005	Time Requested:	10 minutes
Department:	Non-Departmental	Division:	District 2, Commissioner Cruz
Contact(s):	Mary Carroll		
Phone:	503-988-5275	Ext.	85275
		I/O Address:	503/600
Presenter(s):	Dave Boyer, CFO		

General Information

1. What action are you requesting from the Board?

Approve the resolution that describes the joint public safety planning and budget process between the City of Portland and Multnomah County.

2. Please provide sufficient background information for the Board and the public to understand this issue.

On June 2, 2005, the Board of County Commissioners approved the following budget note:

Joint Budgeting With Other Local Jurisdictions: "The goal is to successfully deliver safety results to citizens throughout county with the reduced resources expected to be available in 2007 and beyond. The Board of County Commissioners directs \$50k to be earmarked in Contingency to help support the process with area partners to engage in joint budgeting with other local jurisdictions."

Multnomah County and the City of Portland propose to conduct a joint process to help identify the community's public safety priorities, analyze the efficiency of the current public safety system as it relates to those priorities and to map out the existing City-County public safety system to identify

gaps, duplication and opportunities for funding collaboration.

3. Explain the fiscal impact (current year and ongoing).

The County is working with the City of Portland on a Request for Proposal for professional services to assist in this process. The Budget Office will return to request approval of funds to support the joint budget process, after a selection process and negotiations are completed. It is anticipated that this process will result in efficiencies in the public safety system and will lay the basis for future joint budgeting in public safety.

4. Explain any legal and/or policy issues involved.

This joint process will build upon the County's Priority Based Budget policy.

5. Explain any citizen and/or other government participation that has or will take place.

Community input to identify the public safety priorities will be a part of the joint process.

Required Signatures

**Department/
Agency Director:**

Serena Cruz

Date: 09/13/2005

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Authorizing Participation in a Joint City of Portland and Multnomah County Public Safety System Planning and Budget Process

The Multnomah County Board of County Commissioners Finds:

- a. The City of Portland and Multnomah County share the responsibility of providing a public safety system for citizens of Portland and Multnomah County.
- b. Citizens of Multnomah County do not draw distinctions between services provided by the County or those provided by the City, they look for services to fulfill community needs.
- c. Jurisdictions across the country seek innovative and cost effective ways of serving their populations in the face of rising taxes, a slowly reviving economy, and a reduction of state and federal funding.
- d. The public safety services provided by the City and the County are interconnected and require a balance of prevention, enforcement, incarceration, supervision and treatment.
- e. Multnomah County citizens want to feel and be safe in their homes, neighborhoods and communities:

The Multnomah County Board of County Commissioners Resolves:

1. The County will participate in a joint planning and budgeting process with the City of Portland to help identify the community's public safety priorities.
2. The joint planning and budgeting process will:
 - map out the existing City/County public safety system to identify gaps, overlap, duplication, and opportunities for funding collaboration as it relates to public safety priorities; and
 - involve public safety stakeholders in the process.
3. The County will work with the City to accomplish the goals established in this collaboration project and develop a framework leading to a City/County Public Safety System and full budget process with pooled resources for future fiscal years.

ADOPTED this 22nd day of September, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____

Agnes Sowle, County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 05-163

Authorizing Participation in a Joint City of Portland and Multnomah County Public Safety System Planning and Budget Process

The Multnomah County Board of County Commissioners Finds:

- a. The City of Portland and Multnomah County share the responsibility of providing a public safety system for citizens of Portland and Multnomah County.
- b. Citizens of Multnomah County do not draw distinctions between services provided by the County or those provided by the City, they look for services to fulfill community needs.
- c. Jurisdictions across the country seek innovative and cost effective ways of serving their populations in the face of rising taxes, a slowly reviving economy, and a reduction of state and federal funding.
- d. The public safety services provided by the City and the County are interconnected and require a balance of prevention, enforcement, incarceration, supervision and treatment.
- e. Multnomah County citizens want to feel and be safe in their homes, neighborhoods and communities:

The Multnomah County Board of County Commissioners Resolves:

1. The County will participate in a joint planning and budgeting process with the City of Portland to help identify the community's public safety priorities.
2. The joint planning and budgeting process will:
 - map out the existing City/County public safety system to identify gaps, overlap, duplication, and opportunities for funding collaboration as it relates to public safety priorities; and
 - involve public safety stakeholders in the process.
3. The County will work with the City to accomplish the goals established in this collaboration project and develop a framework leading to a City/County Public Safety System and full budget process with pooled resources for future fiscal years.

ADOPTED this 22nd day of September, 2005.



REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By

Agnes Sowle, County Attorney

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: R-8
Est. Start Time: 11:15 AM
Date Submitted: 09/14/05

BUDGET MODIFICATION:

RESOLUTION Authorizing Commissioner Maria Rojo de Steffey to negotiate on
Agenda Behalf of Multnomah County with ODOT through its Oregon Innovative
Title: Partnerships Program for the Sellwood Bridg Renovation/Replacement Project

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Date Requested:	09/23/2005	Time Requested:	10 minutes
Department:	Non-Departmental	Division:	Rojo de Steffey
Contact(s):	Commissioner Rojo de Steffey		
Phone:	503 988 5220	Ext.	85220
	I/O Address:		503/6
Presenter(s):	Commissioner Rojo de Steffey		

General Information

1. What action are you requesting from the Board?

The county will pursue with the Oregon Department of Transportation, through the Oregon Innovative Partnerships Program (OIPP), the options available to undertake a construction project to replace or renovate the Sellwood Bridge. The resolution authorizes Commissioner Rojo de Steffey to negotiate a proposed agreement on behalf of the Board of County Commissioners, to be brought back to the Board of County Commissioners for approval.

2. Please provide sufficient background information for the Board and the public to understand this issue.

Large cracks were discovered in the concrete approach spans of the Sellwood Bridge in 2003. Reinforcement work took place with several sets of steel plates and speed and weight limitations were imposed.

The bridge has a structural sufficiency rating of 2 out of 100 possible points, with 100 representing a bridge in excellent condition. It is determined the Sellwood Bridge is in need of renovation or replacement.

3. Explain the fiscal impact (current year and ongoing).

No fiscal impact at this time

4. Explain any legal and/or policy issues involved.

The negotiated OIPP proposal will be brought back to the Board of County Commissioners for approval.

5. Explain any citizen and/or other government participation that has or will take place.

Citizen involvement will be an essential part of the decision making process the Sellwood Bridge. There will be an extensive and inclusive community outreach throughout the process.

Required Signatures

**Department/
Agency Director:**

Maria Pijo de Stiffley

Date: 09/14/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Authorizing Commissioner Maria Rojo de Steffey to Negotiate on Behalf of Multnomah County with the Oregon Department of Transportation through its Oregon Innovative Partnerships Program for the Sellwood Bridge Renovation/ Replacement Project.

The Multnomah County Board of Commissioners Finds:

- a. The Sellwood Bridge was built in 1925 and is one of the busiest two-lane bridges in the State of Oregon.
- b. From both a traffic and an engineering perspective, the Sellwood Bridge in its current condition cannot meet the transportation needs of the community it serves.
- c. Many parts of the structure are in an advanced state of deterioration.
- d. Large cracks were discovered in the concrete approach spans in 2003 and were reinforced with several sets of steel plates
- e. The bridge has a structural sufficiency rating of 2 out of 100 possible points – with 100 representing a bridge in excellent condition.
- f. The load limits on the bridge have been restricted to 10 tons and these limits prevent large commercial trucks, Tri-Met buses and most fire trucks from crossing the bridge.
- g. The existing Sellwood Bridge is in need of renovation or replacement.
- h. The Board of County Commissioners has been briefed about the Oregon Innovative Partnerships Program (OIPP) operated under the Oregon Department of Transportation (ODOT) as authorized under ORS 367.800 et seq.
- i. Multnomah County has received an unsolicited bid proposal from Bechtel Infrastructure Corporation for a Public-Private Partnership for rapid replacement of the Sellwood Bridge.

The Multnomah County Board of Commissioners Resolves:

- 1. The County shall pursue with ODOT, though the OIPP, the options available to undertake a construction project to replace or renovate the Sellwood Bridge (the Project).
- 2. The Board will not entertain the unsolicited bid proposal from Bechtel Infrastructure Corporation for the Project.

3. Commissioner Maria Rojo de Steffey is authorized to negotiate a proposed agreement under OIPP on behalf of the County with ODOT.
4. Any proposed agreement shall be subject to Board approval.

ADOPTED this 22nd day of September 2005.

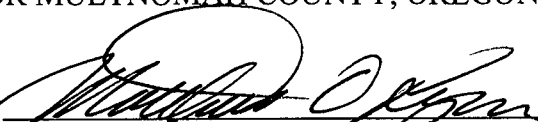
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By


Matthew O. Ryan, Assistant County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 05-164

Authorizing Commissioner Maria Rojo de Steffey to Negotiate on Behalf of Multnomah County with the Oregon Department of Transportation through its Oregon Innovative Partnerships Program for the Sellwood Bridge Renovation/ Replacement Project

The Multnomah County Board of Commissioners Finds:

- a. The Sellwood Bridge was built in 1925 and is one of the busiest two-lane bridges in the State of Oregon.
- b. From both a traffic and an engineering perspective, the Sellwood Bridge in its current condition cannot meet the transportation needs of the community it serves.
- c. Many parts of the structure are in an advanced state of deterioration.
- d. Large cracks were discovered in the concrete approach spans in 2003 and were reinforced with several sets of steel plates
- e. The bridge has a structural sufficiency rating of 2 out of 100 possible points – with 100 representing a bridge in excellent condition.
- f. The load limits on the bridge have been restricted to 10 tons and these limits prevent large commercial trucks, Tri-Met buses and most fire trucks from crossing the bridge.
- g. The existing Sellwood Bridge is in need of renovation or replacement.
- h. The Board of County Commissioners has been briefed about the Oregon Innovative Partnerships Program (OIPP) operated under the Oregon Department of Transportation (ODOT) as authorized under ORS 367.800 et seq.
- i. Multnomah County has received an unsolicited bid proposal from Bechtel Infrastructure Corporation for a Public-Private Partnership for rapid replacement of the Sellwood Bridge.

The Multnomah County Board of Commissioners Resolves:

1. The County shall pursue with ODOT, through the OIPP, the options available to undertake a construction project to replace or renovate the Sellwood Bridge (the Project).
2. The Board will not entertain the unsolicited bid proposal from Bechtel Infrastructure Corporation for the Project.

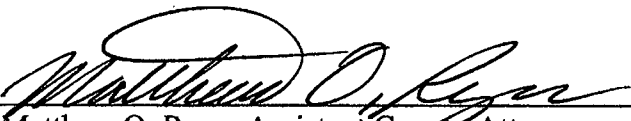
3. Commissioner Maria Rojo de Steffey is authorized to negotiate a proposed agreement under OIPP on behalf of the County with ODOT.
4. Any proposed agreement shall be subject to Board approval.

ADOPTED this 22nd day of September 2005.

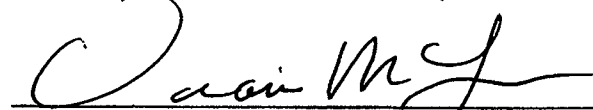


REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 09/22/05
Agenda Item #: E-1
Est. Start Time: 11:20 AM
Date Submitted: 09/12/05

BUDGET MODIFICATION: -

Agenda Title: Executive Session Pursuant to ORS 192.660(2)(h)

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

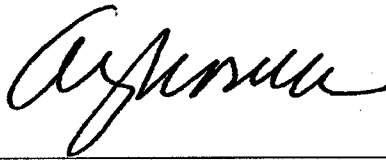
Date Requested:	September 22, 2005	Time Requested:	15-30 mins
Department:	Non-Departmental	Division:	County Attorney
Contact(s):	Agnes Sowle		
Phone:	503 988-3138	Ext.	83138
I/O Address:	503/500		
Presenter(s):	Agnes Sowle and Invited Others		

General Information

1. What action are you requesting from the Board?
No Final Decision will be made in the Executive Session.
2. Please provide sufficient background information for the Board and the public to understand this issue.
Only Representatives of the News Media and Designated Staff are allowed to Attend.
Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session.
3. Explain the fiscal impact (current year and ongoing).
4. Explain any legal and/or policy issues involved.
ORS 192.660(2)(h).
5. Explain any citizen and/or other government participation that has or will take place.

Required Signatures

**Department/
Agency Director:**



Date: 09/12/05

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date: