

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

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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 a 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.