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Oregon Gross Receipts Tax Will Be Considered by Voters in November

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On June 6, 2016, the Oregon Secretary of State qualified Initiative Petition (IP) 28, entitled *A Better Oregon VI*, for placement on the November 8, 2016 Oregon General Election Ballot. If IP 28 is approved by voters, C corporations with Oregon sales of more than $25 million would be subject to a minimum tax of $30,001 plus 2.5 percent of the excess over $25 million.[1] C corporations currently pay a minimum tax based on Oregon sales but that tax is capped at $100,000.[2]

Initiative Petition 28

Current Minimum Tax Structure

Oregon imposes a minimum tax on C corporations that is based on Oregon sales properly reported on a return.[3] The tax ranges from $150 for corporations with less than $500,000 of Oregon sales to $100,000 for corporations with Oregon sales of $100 million or more. Specifically, if Oregon sales properly reported on a return are:

- Less than $500,000, the minimum tax is $150;
- $500,000 or more, but less than $1 million, the minimum tax is $500;
- $1 million or more, but less than $2 million, the minimum tax is $1,000;
- $2 million or more, but less than $3 million, the minimum tax is $1,500;
- $3 million or more, but less than $5 million, the minimum tax is $2,000;
- $5 million or more, but less than $7 million, the minimum tax is $4,000;
- $7 million or more, but less than $10 million, the minimum tax is $7,500;
- $10 million or more, but less than $25 million, the minimum tax is $15,000;
- $25 million or more, but less than $50 million, the minimum tax is $30,000;
- $50 million or more, but less than $75 million, the minimum tax is $50,000;
- $75 million or more, but less than $100 million, the minimum tax is $75,000; and
- $100 million or more, the minimum tax is $100,000.[4]

[1] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 1.
[2] OR. REV. STAT. § 317.090(2)(a).
[3] *Id.*
[4] *Id.*

The minimum tax for S corporations[5] and partnerships[6] is a flat $150.

Sales are generally sourced to Oregon for purposes of the minimum tax through reference to the Oregon sales factor. Corporations apportioning business income under the standard Oregon corporate income tax provisions use the Oregon sales factor as determined pursuant to the statute.[7] Corporations that do not apportion business income are required to calculate the Oregon sales factor as if they were required to apportion business income.[8] Corporations that apportion business income through a method different than the standard Oregon corporate income tax provisions are required to calculate the Oregon sales factor pursuant to rules promulgated by the Oregon Department of Revenue.[9]

Proposed Minimum Tax Structure

IP 28 would revise the minimum tax for C corporations with substantial Oregon sales. If IP 28 is approved by voters, effective for tax years beginning on or after January 1, 2017,[10] C corporations with Oregon sales of more than $25 million would be subject to a minimum tax of $30,001 plus 2.5 percent of the excess over $25 million, without a cap on the potential tax liability.[11] In contrast to the corporate net income tax, IP 28 would be a tax on gross revenue regardless of the C corporation's profit margin or loss, similar to the Washington business & occupation tax.

IP 28 would not revise the minimum tax rates for S corporations[12] or partnerships.[13] Additionally, IP 28 provides that the revisions to the minimum tax do not apply to benefit companies.[14] These companies will continue to be subject to the current minimum tax schedule even if IP 28 is approved by Oregon voters.[15]

Revenue from the increased tax will be used to fund public early childhood and kindergarten through twelfth grade education, healthcare and services for senior citizens.[16] It should be noted that the increased tax could result in impacted businesses increasing prices on their products, resulting in adverse impact to Oregon consumers. The state is

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[5] OR. REV. STAT. § 317.090(2)(b).
[6] OR. REV. STAT. § 314.725.
[7] OR. REV. STAT. § 317.090(1)(a)(A).
[8] OR. REV. STAT. § 317.090(1)(a)(B).
[9] OR. REV. STAT. § 317.090(1)(a)(C).
[10] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 4.
[11] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 1.
[12] *Id.*
[13] OR. REV. STAT. § 314.725.
[14] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 2; OR. REV. STAT. § 60.750.
[15] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 2. *See also* Oregon Legislative Revenue Office, *Initiative Petition 28 Description and Analysis, Research Report #3-16* (May 2016). "In general, a benefit company is one that agrees to adopt the goal of creating a public benefit. Under Oregon law, a public benefit is defined as 'a material positive impact on society and the environment, taken as a whole, from the business and operations of the company.' Currently there are approximately 750 benefit companies listed on the Secretary of State's web site. A large majority of these companies are not C-Corporations and will not be affected by the measure."
[16] Oregon Secretary of State, *Initiative Petition 28, A Better Oregon VI*, § 3.

considering proposals designed to offset the cost of the tax to Oregon taxpayers in the event that IP 28 is passed.[17]

Impact of IP 28

Income Tax Rates and Apportionment Methods Not Affected

IP 28 does not affect the tax rates based on net corporate income.[18] "Oregon corporations will continue to calculate their taxes under both the net income tax rates and the corporate minimum tax schedule and pay the higher of the two."[19] IP 28 also makes no changes to the definition of Oregon sales and has no impact on the calculation of Oregon's single sales apportionment factor.[20]

Impact on Corporations

For purposes of sourcing sales, Oregon utilizes destination sourcing for tangible property (with application of a throwback and double throwback rule) and preponderance (all-or-nothing) cost of performance for sales of services and intangibles.[21] According to the Oregon Legislative Revenue Office, "[u]nder IP 28, the definition of Oregon sales will become much more significant for those corporations with Oregon sales over $25 million."[22] As a result of Oregon's sourcing rules, IP 28 will have little to no impact on corporations that manufacture tangible goods in-state for sale out-of-state and on corporations that perform services out-of-state for in-state sales.[23] IP 28 will impact service corporations that perform services in-state for out-of-state sale because, under Oregon's cost of performance rule, those sales would be counted as Oregon sales.[24] IP 28 is particularly detrimental to taxpayers with a high volume of gross receipts, such as retailers, and taxpayers with sales offices and distribution centers in the state that may be adversely affected by the sales throwback and double throwback rules.

Commentary

If adopted by voters, IP 28 is expected to raise substantial amounts of revenue for Oregon.[25] According to an analysis completed by the Oregon Legislative Revenue Office, if IP 28 were applied to returns filed in 2013, approximately $2.9 billion in taxes would

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[17] *See* Paul Jones, *Oregon Governor Offers Spending Plan for Proposed Gross Receipts Tax Revenue*, TAX ANALYSTS STATE TAX TODAY, June 6, 2016.

[18] Oregon Legislative Revenue Office, *Initiative Petition 28 Description and Analysis, Research Report #3-16* (May 2016).

[19] *Id.* Unlike the corporation net income tax, the minimum tax cannot be offset by state credits (including state research and development credits) and net operating losses.

[20] *Id.*

[21] OR. REV. STAT. § 314.665(2)-(4).

[22] Oregon Legislative Revenue Office, *Initiative Petition 28 Description and Analysis, Research Report #3-16* (May 2016).

[23] *Id.*

[24] *Id.*

[25] *Id.* "IP 28 is expected to generate $548 million in new revenue in the 2015-17 biennium, $6.1 billion in the 2017-19 biennium and $6.0 billion in the 2019-21 biennium."

have been collected from corporations.[26] In stark contrast, the state received $461 million from corporations in 2013.[27]

IP 28 will have the most impact on C corporations with Oregon sales of $100 million or more.[28] Such corporations currently have their minimum tax capped at $100,000. Under IP 28, this cap disappears. Thus, for example, a C corporation with Oregon sales of $350 million that currently pays $100,000 in minimum tax would have a minimum tax liability of $8,155,001 under IP 28.[29]

Additionally, IP 28 is expected to "dramatically" shift the source of tax revenue away from the tax rate system to the minimum tax system.[30] At present, 91 percent of corporate income tax revenue is generated from the tax rate system.[31] Under IP 28, minimum tax revenue will generate 94 percent of C corporation tax liability.[32] It is expected that approximately 400 corporate tax filers that currently pay taxes based on the tax rate system will pay taxes calculated under IP 28's new higher minimum tax system.[33]

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[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*