

A Engrossed HB 2486 – Measure 5 Categorization

Problem

A recent Supreme Court decision has rendered two subsections in ORS Chapter 310.155 unconstitutional. The statute in question dictated how taxes are categorized under the limitations of Measure 5, (1990) without regard to the intended use of the revenue.

This concept follows on the heels of the department removing similar language from our administrative rule. The rule was predicated on the underlying statute.

Solution

Amend ORS 310.155 to remove subsections (2) and (3) because as they are contrary to the constitution as determined by the Supreme Court.

Background

Measure 5, passed in 1990, created two categories into which most taxes billed on the property tax statement are to be placed. One category is general government and the other is education. All levies and taxes for local governments that will be expended for general government purposes must be categorized by each local government under the general government category. All levies and taxes for local governments that will be expended for educational purposes must be categorized by each local government under the education category. Each category has a limit, \$10 for general government and \$5 for education.

Generally it is understood that a city, county, fire district, park and recreation district for example carry out general government functions and generally it is expected that a school district a community college and an ESD would levy and expend their revenues for education purposes. However, the law allows anyone to challenge the categorization in the tax court. There have been circumstances where a city has levied taxes that they indicated would be directed to educational purposes and which appropriately were categorized under the education category.

In quoting the Supreme Court of Oregon in the *Urhausen* Case ,

“The Tax Court concluded that the city’s revenue categorization was not consistent with the Measure 5 requirements. In so holding, the Tax Court declared ORS 310.155(3) unconstitutional and required that revenues be categorized according to their intended use and the purpose for which those revenues were raised. For the reasons that follow, we affirm the Tax Court judgment.”