



To: Chair Hass & Members of the Senate Committee on Finance & Revenue

From: Nellie deVries, Building Owners & Managers Association

Date: June 20, 2017

Re: Please Support HB 3453

The Building Owners and Managers Association (BOMA) of Oregon is a commercial real estate organization representing over 40 million square feet of commercial real estate in Oregon.

BOMA supports HB 3453, which clarifies ORS 307.112 and 307.162 to make them easier for non-profit lessees and their lessors to take advantage of the available property tax exemptions that these statutes facilitate. The primary purpose of ORS 307.112 and 307.162 is to create an exemption to property taxes on properties leased to tax-exempt organizations, which are listed in ORS 307.112(1). Since these statutes were adopted, the legislature has required that any property tax savings to the leased property arising from any property tax exemption inure solely to the benefit of the tax-exempt lessee.

Problem: In 1993, these statutes were amended to provide that in order to qualify for a property tax exemption under these statutes, the applicable lease *must* contain language that states the rent under the lease is set “below market rent.” The Department of Revenue characterized the change as a housekeeping measure to confirm the existing interpretation of the law. While the intent of these amendments was to ensure that the lessee, and not the lessor, would benefit from any property tax exemption granted based on the lessee’s tax exempt status, the “below market rent” language requirement has created unintended obstacles that prevent lessees and lessors from using these statutes to accomplish what the legislature intended. There are at least 3 primary problems that the “below market rent” language requirement causes, and that would be easily cured by the adoption of the proposed bill.

First, the problematic language assumes the exemption has been granted. The current statutes assume that the property tax exemption has already been granted to the lessee and the property at the time the lease is signed. In fact, the parties cooperate to apply for the exemption after the applicable lease is executed. Accordingly, the rent cannot be set “below market” at the time the lease is signed, since the “rent” will be reduced only if the exemption is granted.

Second, in a triple net Lease, rent is set at an agreed amount and the lessee pays property tax, maintenance, and insurance on top of the rent. In this scenario, if the

property tax exemption is granted, the non-profit lessee simply would not pay the property tax that would otherwise be assessed, resulting in a tax savings. Rent is not affected, yet the lessee still receives the tax savings.

Third, the “below market rent” language is often objectionable to both lessors and lessees. Generally neither party believes at the time of lease execution that the rent has been set “below market rent,” and in fact, the rent is generally not initially established “below market rent” for the reasons discussed above. Moreover, the entirety of the applicable language currently required under these statutes is confusing and unclear, and BOMA members (both lessors and lessees) have consistently voiced their objections to these statutes as confusing, not workable, and in need of change.

For the above reasons, the “below market rent” language simply does not work. In fact, we believe this language often results in parties’ inability to use the statutes for their intended purposes. Moreover, this language wastes time and adds an unnecessary level of complication when drafting leases for tax-exempt lessees.

HB 3453 provides a technical tweak to the existing statutes that makes them consistent with their intended purpose, while making them much easier to apply. The language in the proposed amendment simply states the intent of the statute, ***“any tax savings resulting from the exemption granted under this section shall inure solely to the benefit of the institution, organization or public body”*** lessee.

BOMA respectfully requests your support of HB 3453 to ensure the existing statutes operate as intended.

Thank You.