

*Boquist Baertschiger v. State of Oregon (Legislature) 2018*

Count Three: Unconstitutional Under Article IV Section 32

21.

Article IV, Section 32 reads “Income tax defined by federal law; review of tax laws required. Notwithstanding any other provision of this Constitution, the Legislative Assembly, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provisions. At each regular session the Legislative Assembly shall, and at any special session may, provide for a review of the Oregon laws imposing a tax upon or measured by income, but no such laws shall be amended or repealed except by a legislative Act. [Created through H.J.R. 3, 1969, and adopted by the people Nov. 3, 1970]”

Ballot Measure 2 of 1970 was referred to the voters by the Legislature after tax reforms of 1969, for the purpose of simplifying Oregon’s state tax returns to closely align with those of the federal government. Using the *Priest* doctrine of wording, case law, and historical circumstances the ‘wording’ and ‘historical circumstances’ appear clear to me the legislature, including myself, lost its way.

22.

The ballot title states “AUTOMATIC ADOPTION, FEDERAL INCOME TAX AMENDMENTS – Purpose: To simplify preparation of income tax returns, the 1969 Oregon Legislature passed a law which provides that Oregon income tax will be computed by a method corresponding to the federal income tax. This Constitutional Amendment provides that when the U.S. Congress changes method of computation, the changes are automatically adopted into Oregon law. The Oregon Legislature, however, must review such changes when it meets in regular session and modify or reject them.”

23.

The ballot measure Explanation states “One June 13, 1969, the present Oregon income tax law became effective for the purpose of simplifying Oregon personal income taxes. Simplicity was achieved by conforming Oregon’s definition of taxable income to federal taxable income. To maintain conformity, it is essential that future changes in federal tax law are promptly and easily adopted by Oregon. Failure to adopt such changes would recreate the two sets of income tax rules which the simplification bill is intended to eliminate. The purpose of HJR 3 is to amend the Oregon Constitution to allow the Legislature to automatically adopt changes in federal taxable income for the state income tax purposes. Under the proposed Constitutional Amendment the Legislature will be required to review all federal tax changes at each regular session (optional at special sessions) and if it chooses may reject or modify such changes. If no action is taken, changes in the federal taxable income are automatically adopted. The Legislature retains its power to set income tax rates and permit credits”

24.

The 'wording' of the ballot title and explanation lead me to a simple conclusion today: Oregon is automatically connected to federal income tax law to ensure one simple set of tax preparations, meaning state and federal tax preparation, and filing, will be identical or nearly identical. This is automatically. Then every two years, after the fact of automatic connection ensuring one set rules, the Legislature will review what has been done, and then may make changes. In 1970, the Legislature was limited to meeting every two years. Thus an automatic connection could be in place for 12-18 months before review by the Legislature. The default and public anticipation would have been, and would be, one set of income tax rules will be utilized yet the Legislature can change State tax rates and credits after the fact. I can personally testify to the court that is not what happens today.

25.

The question is what 'historical circumstances' did the voters understand in 1970. It is clear, their representatives wanted one system as ascribed by the referral of HJR 3 to the voters. Note, it is a House Joint Resolution since it was likely considered a 'revenue' bill. The nonpartisan Explanation by Henry Blauer, Myron Fleck and Hubert Walker is clear above. Two arguments are in the 1970 Voters Pamphlet:

26.

Argument in Favor by Legislative Committee with the names of Senator Husband, Representative Hart and Representative Johnson is quite clear in that a single simplistic system was the intent and purpose of the constitutional amendment. Quote "House Joint Resolution 3 is necessary to preserve the advantages of having the same tax laws for both

state and federal.” Quote “House Joint Resolution 3 will save the state and taxpayers time and money keeping the method of filing state income tax returns relatively simple. This is already demonstrated in the filing of the 1969 Oregon personal income tax returns where most taxpayers simply attach a copy of their federal return to a very simple Oregon return.” Quote “In keeping the Oregon and federal laws the same, full advantage may be taken of administration and court interpretations, rulings and decisions, by both the taxpayer and by state administration.”

27.

Argument in Opposition by Women’s Legislative Council, while opposed, saw the same automatic connections then later review by the Legislature. Quote “Measure 2 proposes that Oregon follow the federal government in lockstep on rules, regulations and deductions on state income tax forms.”

28.

It should be clear to the court, who itself today at a minimum files a four page Form 40-R, that the Legislature has ignored Article IV Section 32. This includes myself. There is nothing simple about filing personal income taxes in Oregon. The Department of Revenue eliminated EZ simple forms several years ago. SB 1528B did not comply with the constitutional intent or process adopted by the people with Ballot Measure 2. Unfortunately, most of the legislation regarding the federal tax law connection, including for which I voted, did not comply with Ballot Measure 2 either. In my tenure in the Legislature, the Department of Revenue has moved from one page EZ Forms to minimum four pages, if not hundreds of pages. Unfortunately, Legislators, like myself,

failing to even know about Article IV Section 32, has allowed, and have participated, in this deviation from this clause of the constitution.

29.

While as an individual taxpayer, I certainly would not have known the existence or intent of Measure 2's passage, and constitutional insertion to Article IV Section 32 from 1970. However, as a sitting State Senator, I was stunned to learn of this portion of the Oregon Constitution in a legislative hearing less than one month ago. A hearing intended to accomplish the exact opposite in my mind. Then it was only discovered under questioning of Legislative Counsel. I feel as an elected representative of approximately 130,000 citizens, and member of a revenue committee in the legislature, I was intentionally deceived on the legal basis for Oregon's automatic connection to the federal law. As a legislator, I was advised the exact opposite of Article IV Section 32 for more than a dozen years in the legislature. In fact, the deception is so grand, I Carried bills on the Floor of the Senate claiming, as I was legally advised, we must take this action to automatically connect under the law. This type of legislation has been called the 'rolling reconnect' but Article IV Section 32 is the exact opposite, the State is automatically connected, and the Legislature after the fact of connection, must review every two years, and may modify the automatic connection after the fact upon review. It is time to return to intent, purpose, and essential features the people understood upon passage of Ballot Measure 2. I ask the court to strike down SB 1528B on the grounds it's passage did not conform to Article IV Section 32.

30.

As footnote, the majority Democrat Legislature can return a version of their desired changes for a new vote of the people for Article IV Section 32. The present decade old process in the Legislature has been the reverse in that Legislators have been told they must vote this or that change in order to automatically connect, that is not what the voters adopted into the constitution with Ballot Measure 2. This is not the only constitutional grand deception in the legislature.

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