



CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE
BUREAU OF REVENUE AND FINANCIAL SERVICES

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Re: HB 4031 amendments

Chair Nathanson, Members of the Committee:

I write in support of the HB 4031 amendments. Efficient and effective tax administration by the city requires the trust of taxpayers that their information submitted on tax returns and support of items of income and expenses claimed on tax returns are held in confidence. It also requires the city to be able to share and receive confidential information with select organizations such as the Oregon Department of Revenue and the Internal Revenue Service.

I believe you are aware of a recent Multnomah County District Attorney order regarding a public records request for taxpayer names and amounts paid under the City of Portland's Clean Energy Surcharge. The organization that made this request argues their request is very narrow. However, that characterization ignores the broader implications of the District Attorney's order.

The District Attorney's (DA) order addresses the city's assertion that ORS 192.355(9)(a) exempts from disclosure public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law. The city pointed to Portland City Code 7.020.230 as Oregon law that makes tax return information confidential. The DA's order states that Portland City Code unambiguously exempts tax return information from disclosure, but it does not override public records law. The DA concludes that Oregon law does not include city ordinances and unless expressly exempted under "Oregon law" a public record, in this case local tax return information, is not exempt from disclosure as there is no explicit exemption in the statutes.

The DA further states "Perhaps if the legislature were to consider the question, it would grant local governments the authority to keep business tax information confidential just as it has done for the state government. However, the Clean Energy Tax, Measure 26-201 (2018) was approved by voters in the absence of such legislation. Until such time as the legislature chooses to act in this area, we must interpret the law the legislature and voters have written, not the law we think it might be prudent for them to write." Whether adopted by ordinance or approved by voters, all the local metro-area taxes were adopted without state legislation providing an express exemption except the lodging tax.

As written, the order states that local tax returns and related information are not exempt from a public records request. Whether the request is limited as in the current public records request or more extensive, the fact that it comes from tax returns means it is tax information. The DA's order does not limit the application of his reasoning to the Clean Energy Surcharge. Essentially, every piece of information on a tax return or documents submitted in response to an audit is available to anyone making a public records request.

The Multnomah County, Metro, and Portland tax returns for businesses and individuals begin with tax returns that are filed with the Internal Revenue Service and the Oregon Department of Revenue. This means that information that is confidential for federal and state purposes will not be confidential at the local level. We are aware of no other jurisdiction, federal, state or local, that allows the release of this information. Allowing this information to be available in public records requests will not only harm taxpayers but will create serious barriers to efficient and effective tax administration at the local level.

The city has filed suit in court to defend its belief that this information is and should be held in confidence. However, litigation always comes with uncertainties. If the city loses, the decision has the potential to expose a lot of sensitive taxpayer information that is included in tax returns to any public records request that is made. This applies to both business and individual taxpayer information.

The city's Revenue Division has discussed a proposed amendment that hasn't been published with Scott Bruun of Oregon Business and Industry and Nikki Dobay that respects taxpayer confidentiality and also allows local governments to share information for tax administrative purposes. Tax information would only be shared consistent with the Oregon Department of Revenue's practices. Examples include sharing city information with the Internal Revenue Service, Oregon Department of Revenue, and the local governments we administer taxes for. These amendments only seek conformity with state law and nothing more. I urge your support for HB 4031 as it is proposed to be amended.

Sincerely,

Tyler Wallace