

This opinion is issued in response to questions presented by Richard Munn, Director, Oregon Department of Revenue, concerning Article XI, section 11g, of the Oregon Constitution. For tax year 1997-98, section 11g(1) limits the amount of ad valorem property taxes that may be imposed to the lesser of the amount imposed on the same property for the tax year ending June 30, 1996, reduced by 10 percent, or the amount imposed on the same property for the tax year ending June 30, 1995. After tax year 1997-98, section 11g(2) generally limits ad valorem property taxes on each property to the tax of the previous year, plus three percent. Section 11g also provides for exceptions from these limitations, most notably for taxes levied to pay bonded indebtedness or interest thereon, and includes other general provisions.<sup>(1)</sup>

Article XI, section 11g, was approved by the people as Ballot Measure 47 at the November 5, 1996 general election. Prior to its approval by the people, we issued an opinion that addressed other questions about its provisions. 48 Op Atty Gen \_\_\_\_ (No. 8243, October 17, 1996) (hereinafter Op Atty Gen No. 8243). For the sake of brevity, we do not repeat here the discussion of the principles used by courts in interpreting constitutional amendments approved by the people as ballot measures. Instead, we refer you to Op Atty Gen No. 8243, at 6-7.

**FIRST QUESTION PRESENTED**  
(Taxes Levied To Pay Bonded Indebtedness)

Article XI, section 11g(1), of the Oregon Constitution provides that, subject to certain exceptions, the ad valorem property tax on each property for tax year 1997-98, "excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon," may not exceed the lesser of "(i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995."

Article XI, section 11g(2)(a), provides that, subject to certain exceptions, the ad valorem property tax on each property for tax years following tax year 1997-98 shall not exceed the previous year's tax plus three

percent. Section 11g(2)(b) exempts from the three percent limitation on the annual growth of taxes set forth in section 11g(2)(a) that "portion of the property tax that is levied on each property for the payment of bonded indebtedness or interest thereon."

(a) What is meant by the following phrases:

- "tax that is levied to pay bonded indebtedness or interest thereon" in section 11g(1)?
- "tax that is levied on each property for the payment of bonded indebtedness or interest thereon" in section 11g(2)?

(b) Do the two phrases quoted above include taxes to pay urban renewal debt?

(c) In calculating the maximum ad valorem property tax that may be levied under section 11g(1) on a property for tax year 1997-98, do the "ad valorem property tax on the same property for the tax year ending June 30, 1996," and the "ad valorem property tax on the same property for the tax year ending June 30, 1995," include taxes levied to pay bonded indebtedness or interest thereon?

(d) In calculating the maximum ad valorem property tax that may be levied under section 11g(2) on a property for tax years after 1997-98, does "the tax for the previous year" include the portion of the tax levied for the payment of bonded indebtedness or interest thereon?

**ANSWER GIVEN**

(a) The phrases "tax that is levied to pay bonded indebtedness or interest thereon" and "tax that is levied on each property for the payment of bonded indebtedness or interest thereon" in sections 11g(1) and (2)(b) have the same meaning. In both cases, the tax need not have been levied for the express purpose of paying bonded debt. However, revenue from the tax must be legally dedicated to the payment of bonded debt and must not be available to the taxing unit for the payment of other expenses. In addition, the amount of the tax so dedicated for any tax year must be determinable before the property taxes for that year are assessed.

**(b)** In a previous opinion, we concluded that tax increment revenues that are to be used to pay bonded indebtedness incurred by an urban renewal agency are not subject to the property tax limitations in section 11g(1) and (2). Consistent with our answer above, those revenues are exempt from the Measure's limitations only if they are legally dedicated to the payment of bonded indebtedness and the amount so dedicated for a tax year is determinable before the assessment of property taxes for that year.

**(c)** In calculating the maximum ad valorem property tax that may be levied under section 11g(1) on a property for tax year 1997-98, taxes levied to pay bonded indebtedness or interest thereon (bond taxes) are included in the taxes for the comparison years' taxes, 1994-95 and 1995-96. The literal language of section 11g(1), read in isolation, dictates a formula for calculating 1997-98 ad valorem property taxes for each property: first, compare 90 percent of the total 1995-96 ad valorem property taxes for a property to the total 1994-95 ad valorem property taxes for that property; second, choose the lower of those two numbers; third, add to this number all 1997-98 ad valorem property taxes dedicated to pay bonded indebtedness or interest thereon (bond taxes). There is no plausible alternative reading of the text that would change this formula.

**(d)** In calculating the maximum ad valorem property tax that may be levied under section 11g(2) on a property for tax years after 1997-98, "the tax for the previous year" does not include bond taxes. By stating that bond taxes are "exempted from" the three percent limitation, section 11g(2) instructs that the calculation used to determine the property tax in any given year after 1997-98 should be made using the prior year's non-bond taxes.

**SECOND QUESTION PRESENTED**  
(Exceptions in Subsections (3), (4) and (5))

By their terms, the limitations in section 11g(1) and (2) apply "except as provided in subsections (3), (4), and (5)." The exceptions in subsections (3), (4) and (5) address, respectively, new or additional taxes, situations affecting property values and situations in which property loses its eligibility for a tax exemption or special assessment.

**(a)** Do the property tax limitations in section 11g(1) and (2) apply in situations that are subject to subsections (3), (4) and (5)? If so, how do the requirements of subsections (3), (4) and (5) affect the application of the limitations in section 11g(1) and (2)?

**(b)** Does section 11g(4)(a) permit ad valorem property taxes for tax year 1997-98 to be increased by reason of improvements to the property made during tax years 1994-95, 1995-96 or 1996-97, notwithstanding the limitation imposed by section 11g(1)?

**ANSWER GIVEN**

**(a)** The property tax limitations in section 11g(1) and (2) do not apply to situations that are covered by subsections (3), (4) or (5). Instead, those situations are subject to the specific property tax limitations imposed by subsections (3), (4) and (5).

**(b)** Ad valorem property taxes for 1997-98 may be increased by reason of improvements made during 1994-95, 1995-96 or 1996-97. As we conclude above, this is a specific exception to the limitation imposed by section 11g(1).

**THIRD QUESTION PRESENTED**  
(Legislatively Imposed Limitations)

Would any provision of the Oregon Constitution (including Article VI, section 10, and Article XI, section 2, relating to "home rule," and Article I, section 11g itself) prohibit the Legislative Assembly from providing by law limitations of ad valorem property taxes that are more restrictive than the limitations found in Article XI, section 11g? For example, may the legislature provide by law that for purposes of calculating the maximum ad valorem property tax that may be levied on a property for tax year 1997-98, the ad valorem property tax on the same property for the tax years ending June 30, 1995 and June 30, 1996, does not include taxes to pay bonded indebtedness or interest thereon?

**ANSWER GIVEN**

The Legislative Assembly may enact more restrictive limitations on ad valorem property taxes than those specified in Article XI, section 11g, without violating any provision of the Oregon Constitution.

**FOURTH QUESTION PRESENTED**

(New or Additional Taxes)

Article XI, section 11g(3)(a), prohibits "new or additional ad valorem property tax levies against real property" on and after December 5, 1996,<sup>(2)</sup> unless the question of the tax levy has met the voter approval requirements specified in section 11g(3)(a).

- (a) What is a "new" tax for purposes of section 11g(3)(a)?
- (b) What is an "additional" tax for purposes of section 11g(3)(a)?
- (c) For purposes of section 11g(3)(a), would any of the following be a "new" tax:
1. A tax that is otherwise within the limitations of section 11g(1) and (2), e.g., a new serial levy to replace a levy that is expiring, tax increases within a growing tax base or a continuing levy?
  2. A tax approved by the voters before December 5, 1996, but not levied until on or after that date?
  3. A tax levied on or after December 5, 1996, to pay bonds issued without voter approval before that date? For example, taxes levied to pay local improvement district bonds, special assessment bonds or a \$13 million retirement bond levy?
  4. Increases in urban renewal ad valorem property taxes arising on or after December 5, 1996?
- (d) For purposes of section 11g(3)(a), would any of the four taxes listed above be an "additional" tax?

**ANSWER GIVEN**

- (a) Although not without some doubt, we conclude that, for purposes of section 11g(3)(a), a "new" ad valorem property tax is a new kind of tax that is legally authorized after the effective date of section 11g, not merely another iteration of an existing tax, such as a new serial levy to replace a levy that is expiring, tax increases within a growing tax base under Article XI, section 11, or a one-year or continuing levy.
- (b) Although the meaning of "additional" tax also is uncertain, we believe that it would be interpreted to mean a tax that is in addition to the amount of tax that may be imposed under the limits of section 11g(1) and (2).
- (c) For purposes of section 11g(3)(a), we believe that a "new" tax does not encompass another iteration of a tax which was already authorized under existing law. Thus, the following would not be "new" ad valorem property taxes:
- (1) A new serial levy to replace a levy that is expiring, tax increases within a growing tax base or a continuing levy, if the levy is imposed for the same general governmental purposes.
  - (2) A tax approved by the voters before December 5, 1996, but not levied until on or after that date because the voter approval gave the legal authority to impose the taxes.
  - (3) A tax levied on or after December 5, 1996, to repay bonds issued without voter approval before that date, such as local improvement district bonds, special assessment bonds or a \$13 million retirement bond, provided the legal authority to impose the taxes for the payment of that bonded indebtedness existed prior to December 5, 1996.
  - (4) Increases in urban renewal ad valorem property taxes arising after December 5, 1996, provided the increases were not due to a change on or after that date in the laws that impose the tax or a change in the urban renewal plan upon which the tax is based.

However, we caution that this conclusion is not certain and that courts might determine that every new levy of an ad valorem property tax is a "new" tax that requires voter approval, irrespective of previous impositions of such taxes for the same purposes or with the same scope.

- (d) Each of the four taxes identified in your question would be "additional" taxes for purposes of section 11g(3)(a) to the extent that the taxes imposed on a property exceeded the amount of ad valorem tax that could be imposed under the limitations of section 11g(1) or (2). As discussed in Part I of this opinion, those limitations do not apply to taxes to pay bonded indebtedness.

## **FIFTH QUESTION PRESENTED**

(Increases in Urban Renewal Taxes)

How do the voter approval requirements of section 11g(3)(a) apply to increases in urban renewal ad valorem property taxes?

### **ANSWER GIVEN**

The voter approval requirements of section 11g(3)(a) apply to all "new" or "additional" ad valorem property taxes that are allocated to urban renewal. Thus, voter approval would be required if urban renewal taxes are generated by a newly authorized urban renewal plan or from an amendment to an urban renewal plan. Voter approval would also be required if to collect the full amount of urban renewal taxes of those taxes in combination with all other ad valorem taxes on a property would exceed the limitations in section 11g(1) or (2). However, these limitations do not apply to the portion of urban renewal taxes that are legally dedicated to pay bonded indebtedness.

Although section 11g(3) requires elections for "new" or "additional" ad valorem property taxes, section 11g does not authorize elections to approve such "new" or "additional" taxes, nor is provision for such elections made in current statutory law. Therefore, additional legislation will be necessary to authorize elections in which local governments, including urban renewal agencies, may seek voter approval of "new or additional" taxes in compliance with section 11g(3).

## **SIXTH QUESTION PRESENTED**

(Exceptions to Voter Approval for Bonded Debt)

Article XI, section 11g(3)(b), provides that "[n]othing in this subsection [which includes the voter approval requirement] shall affect taxes levied to repay bonded indebtedness approved by voters in an election held prior to [December 5, 1996], or the issuance of refunding bonds to pay such bonded indebtedness." Section 11g(3)(b) also provides that voter approval is not required "for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with" the voter approval requirements of section 11g(3)(a).

Do the exceptions to the voter approval requirement in section 11g(3)(b) apply only to the issuance of bonds or also to the levy of ad valorem property taxes to pay the bonded indebtedness?

### **ANSWER GIVEN**

Under section 11g(3)(b), the voter approval requirement of section 11g(3)(a) does not apply to taxes to repay bonds if the bonds were approved by the voters prior to December 5, notwithstanding the fact that the taxes may be "new" or "additional." In addition, such voter approval is not required for either the issuance of, or the levy of taxes to pay, bonds issued to refund bonds, but only if those original bonds received voter approval in conformity with the requirements of section 11g(3)(a).

## **SEVENTH QUESTION PRESENTED**

(Property and Unit of Property)

The limitations on ad valorem property taxes imposed by Article XI, section 11g, apply to taxes levied on "each property."

(a) What is meant by the term "property" as used in section 11g? Does centrally assessed utility property come within that term?

(b) What is the unit of property for purposes of applying the limitations in section 11g? For example,

(1) Is a tax account consisting of either real property (land and improvements) or personal property a single unit of "property" if the real property or personal property is part of an industrial plant?

(2) Is each identifiable piece of personal property within a personal property account a separate unit of "property"?

(3) Is an entire centrally assessed utility property a single unit of "property" for purposes of its limitations on ad valorem property taxes?

(c) May the unit of property for purposes of the section 11g limitations on ad valorem property taxes be different from the unit of property used for appraisal purposes?

### **ANSWER GIVEN**

(a) The term "property" in section 11g has no specific meaning, but encompasses all forms of property recognized in law, such as real and personal property, tangible and intangible property. Thus, it includes utility property that is "centrally assessed" by the Department of Revenue under ORS 308.515.

(b) Because section 11g does not prescribe the unit of property to which its limitations apply, the legislature may define the unit of property in any manner it chooses, as long as the definition is consistent with the intent of section 11g in limiting property taxes. The current statutory definition of the unit of property in ORS 310.160 is not inconsistent with that intent. This definition includes within the unit of property all property that has been combined into a single integrative purpose, regardless of any division into separate tax accounts.

Assuming the legislature follows the approach found in ORS 310.160, (1) a tax account consisting either of real property (land and improvements) or of personal property would be a single unit of "property," unless the real or personal property is an integrated part of a larger property within a tax code area, such as an industrial plant, in which case it would be part of that larger unit of property, and not a separate unit of property, (2) each identifiable piece of personal property within a personal property tax account would not be a separate unit of property, but the "property" would instead include all of the items in that account, and (3) all of the property of a utility taxed within a tax code area that is centrally assessed by the Department of Revenue under ORS 308.515 would be a single unit of property.

(c) The unit of property for purposes of the section 11g limitations may be different from the unit of property for appraisal purposes, provided that the assessed valuation on the unit for purposes of section 11g does not exceed real market value.

### **EIGHTH QUESTION PRESENTED**

(Improvements)

Under specified conditions, Article XI, section 11g(4)(a), authorizes increases in ad valorem property taxes in excess of the generally applicable limitations prescribed by section 11g(1) and (2) to the extent the increases are attributable to "improvements" made during or after the 1994-95 tax year. However, increases in ad valorem property taxes by reason of improvements may not result in a tax that exceeds "the lesser of (i) the average ad valorem property taxes paid on similar properties similarly valued and located in the same taxing code area, or (ii) the ad valorem property taxes on the property without regard to the new or additional improvements, plus the ad valorem property taxes on the improvements at the same dollar-to-value ratio as paid on the property without the improvements."

(a) How would the section 11g(4)(a) property tax limitations apply to property that has been improved?

(b) If a unit of property, for purposes of section 11g, includes machinery and equipment that is real property, would the property be subject to the exception for improved property under section 11g(4) if the property is "improved" within the meaning of that section, but has a concurrent offsetting reduction in value due to depreciation or retirements?

(c) If a unit of property includes machinery or equipment and is "improved" within the meaning of section 11g(4), how is the value of the unimproved property to be determined for purposes of calculating the dollar-to-value ratio referred to in section 11g(4)(a)(ii)?

### **ANSWER GIVEN**

(a) See the discussion for a general explanation of how the section 11g property tax limitations apply to property that has been improved under section 11g(4)(a).

(b) A property can be "improved" for purposes of the section 11g(4) exception even if the property had a concurrent offsetting reduction in value due to depreciation or retirements.

(c) For purposes of the section 11g(4)(a)(ii) limitation, the value of the unimproved property should be based on the property's real market value for the current year. If the improved property includes machinery or equipment, reductions in value due to depreciation or retirements must be taken into account in determining the unimproved property's current real

market value.

### NINTH QUESTION PRESENTED

(Personal Property)

How should the limitations of section 11g be applied when determining the taxes for new personal property that is added to each of the following existing properties:

- (a) Business property consisting of both real and personal property?
- (b) A tax account consisting entirely of items of personal property, such as an industrial property tax account?
- (c) An individual item of personal property?

### ANSWER GIVEN

If personal property is an improvement for purposes of section 11g(4)(a), the taxes on the "improved" property would be determined by the special limitation in that section. If personal property is not an improvement, taxes on the combined property (the existing property plus the newly added personal property) would be subject to the three percent growth limitation in section 11g(2).

We now reverse our earlier opinion and conclude that personal property can be an improvement for purposes of section 11g(4)(a). Adding new personal property to each of the three examples in your question would be treated as an improvement, provided the addition was a "major" addition to that unit of property, or the existing unit of property was "remodeled" or "renovated" by the new personal property. If an improvement, the property would be subject to the special limitation in section 11g(4)(a), rather than the three percent growth limitation in section 11g(2).

### TENTH QUESTION PRESENTED

(Revenue Reductions)

Article XI, section 11g(7) refers to possible allocation of "revenue reductions resulting from" section 11g. How are the "revenue reductions resulting from this Act" to be determined? For example, are the "revenue reductions" the difference between the revenues that could be collected under law without the limitations of section 11g and those that can be collected under law with the limitations of section 11g?

### ANSWER GIVEN

"Revenue reductions" are the losses in property tax revenue that are caused by the limitations of Article XI, section 11g. They are the difference between the amount of property taxes that may be imposed on property without regard to the limitations of section 11g and the amount of property taxes that may be imposed on property within the limitations of section 11g.

### DISCUSSION

#### I. Treatment of Ad Valorem Taxes Levied to Pay Bonded Indebtedness in Calculating Tax Limitations

Article XI, section 11g(1) and (2) exclude any tax levied to pay bonded indebtedness or interest thereon from the limitations on ad valorem property taxes. Your first set of questions concerns these references to taxes "levied" to pay "bonded indebtedness or interest thereon."

Section 11g(1) and (2) provide:

(1) Except as provided in subsections (3), (4), and (5) of this section, the ad valorem property tax on each property for the tax year 1997-98, excluding the portion of the *tax that is levied to pay bonded indebtedness or interest thereon*, shall not exceed the lesser of the following: (i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995.

(2)(a) For tax years following tax year 1997-98, except as provided in subsections (3), (4), and (5) of this section, the ad valorem property tax on each property shall not exceed the tax for the previous year, plus three percent (3%).

(b) The portion of the property *tax that is levied on each property for the payment of bonded indebtedness or interest thereon* is exempted from the three percent (3%) annual increase limitation set forth in (a) of this subsection.

(Emphasis added.)

## A. Meaning of Taxes Levied to Pay Bonded Indebtedness

You first ask what is meant by the phrase, in section 11g(1), "tax that is levied to pay bonded indebtedness or interest thereon" and the slightly different phrase, in section 11b(2), "tax that is levied on each property for the payment of bonded indebtedness or interest thereon." In other words, how is a taxing unit to determine which portion of the total ad valorem property taxes assessed for a particular tax year constitutes "tax that is levied to pay bonded indebtedness or interest thereon," and which portion constitutes other ad valorem property taxes that are subject to the section 11g limitations? We conclude that both phrases have the same meaning and refer to a tax that is legally dedicated to the payment of bonded indebtedness, or interest thereon, provided that the amount of the tax so dedicated in any tax year is identifiable before the taxes are assessed.

### 1. In General

We have previously noted that, because the overall intent of section 11g is to limit property taxes, the exceptions for taxes to pay bonded debt in section 11g(1) and (2) should be strictly construed. Op Atty Gen No. 8243, at 13. With that in mind, we begin by examining the text of section 11g. See *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993) (in interpreting ballot measure, best evidence of voters' intent is text of measure itself).

### 2. "Bonded Indebtedness and Interest Thereon"

Under section 11g(1), ad valorem property taxes that are "levied to pay bonded indebtedness or interest thereon" are exempt from the 1997-98 property tax limitation. Section 11g(2) excludes such taxes from the three percent limitation on growth of property taxes for tax years after 1997-98.

"Bonded indebtedness" is not defined for purposes of section 11g. In Op Atty Gen No. 8243, at 13-14, we concluded that this expression included all kinds of bonds, including but not limited to general obligation and revenue bonds. Here, we reaffirm that conclusion, but also conclude that the expression probably does not include similar forms of indebtedness, such as notes.

We believe the courts would give the expression "bonded indebtedness" its ordinary meaning. Webster's Third New International Dictionary (unabridged 1993) (hereinafter Webster's International), provides no specific definition for "bonded indebtedness. It defines the term "bond" as:

**5 b** : an interest-bearing document giving evidence of a long-term debt and issued by a government body or corporation sometimes secured by a lien on property and often designed to take care of a particular financial need

*Id.* at 250. This is similar to the definition of a "bond" that we relied on in 44 Op Atty Gen 85, 123 (1984), which addressed questions about another property tax limitation measure<sup>(3)</sup> that exempted "bonded indebtedness":

A bond is the formalized agreement by which the bond issuer (borrower) promises to repay the bond purchaser (lender) a certain amount of money (principal) at a stated rate of interest on or before a certain date.

Some statutes have defined "bond," for limited purposes. Notably, ORS 288.515(1) states that "bond" includes "general obligation, revenue or tax increment bonds, or notes of a public body." Notes are similar to bonds. A "note" is defined as:

**3 d** (2) a written or printed paper acknowledging a debt and promising payment : a written promise to pay

Webster's International at 1815. This similarity of the definitions of a "bond" and "note" raises the question whether "bonded indebtedness" might also include notes.

Apart from formal differences not relevant here, the primary difference between bonds and notes appears to be their respective "maturities," that is, the time when the debt principal becomes due. Moody's Investor's Service, Inc., a nationally recognized bond rating service has published *Moody's on Municipals - An Introduction to Issuing Debt* (1987),

which provides this useful definition of "bond":

Written evidence of the issuer's obligation to repay a specified principal amount on a date certain (maturity date), together with interest at a stated rate, or according to a formula for determining that rate. Bonds are distinguishable from notes, which mature in a much shorter period of time. Bonds may be classified according to maturity (serial vs. term), source of payment (general obligation vs. revenue), method of transfer (bearer vs. registered), issuer (state vs. municipality vs. special district) or price (discount vs. premium).

*Id.* at 57. Thus, bonds are written instruments evidencing a debt with a "long-term" maturity. Notes have shorter maturities. The maturities of municipal notes typically range from a month to a year, with interest payable at the maturity date. Treasury notes may have an original maturity of up to 10 years, with interest payable at intervals up to and including the maturity date. *See* M. Stigum, *Money Market* 703 (rev ed 1983).

The clauses in section 11g(1) and (2) that exempt taxes levied to pay bonded indebtedness from the limitations of those subsections "should be construed strictly in order not to allow property taxes beyond what reasonably fits within the exception to escape the limitation." *See* 44 Op Atty Gen at 123. Thus, although notes and other instruments may be similar to bonds, we believe that, based on the plain, ordinary meaning of the words, the courts will hold that "bonded indebtedness" refers only to debt instruments that are conventionally denominated bonds and not to similar debt instruments such as notes.<sup>(4)</sup>

We are not unmindful that a strict construction of the "bonded indebtedness" exemption from the limitations of section 11g(1) and (2) could operate in particular instances to impair unconstitutionally other forms of contractual indebtedness. *See* 44 Op Atty Gen at 125-130. However, such unconstitutional impairment would arise from the application of section 11g(1) and (2) to particular contract obligations, not directly from the limitations themselves, because the limitations do not on their face apply to contracts. If a particular application of the limitations of section 11g(1) and (2) did impair contractual obligations, the application would be found unconstitutional. In this circumstance, a court might find that the limitations of section 11g(1) and (2) do not apply to "ad valorem taxes *necessary* to be levied to pay for other indebtedness incurred prior to the effective date" of these limitations. *See* 44 Op Atty at 130.

### 3. "Levied to Pay"

One interpretation of the phrase "levied to pay" bonded indebtedness could be that the taxes were levied for the express purpose of paying bonded debt. Under that interpretation, all property taxes levied for general operating purposes would be subject to the limitation in section 11g(1) and 11g(2), even if they were legally dedicated to pay bonded debt or were actually used for that purpose. Another interpretation of "levied to pay" emphasizes the actual purpose of the levy, irrespective of whether that purpose was express. For example, that purpose might be found in a statute or ordinance that dedicates part of a general operating levy to the payment of bonded indebtedness. We reject as unreasonable the construction of "levied to pay" as meaning no more than that taxes were actually used to pay bonded indebtedness.

Section 11g does not define what is meant by "levied" for purposes of section 11g(1) or otherwise. We considered the meaning of "levied" in 44 Op Atty Gen 85 (1984) in the context of interpreting another property tax limitation measure. Citing Webster's New Collegiate Dictionary 661 (1973), we stated:

The plain and ordinary meaning of the verb "levy" is, among other things, "the imposition or collection of an assessment."

44 Op Atty Gen at 226. We observed that, because the property tax limitation measure was intended to be a limitation on governmental authority, "levy" should be construed relative to the government act that authorizes the charge. That act "occurs when the fees are imposed and made compulsory by official governmental action." *Id.* Thus, "levy" should be given the meaning "to impose" rather than "to collect." "Impose" refers to the point in time when the required fee is established and the amount is fixed. *Id.* More recently, we noted that, in Oregon decisions, the term "levy" has been construed as "the political decision to raise an amount of revenue from taxpayers by a specified formula." Op Atty Gen No. 8243, at 13 (quoting *Dennehy v. Dept. of Revenue*, 305 Or 595, 602, 765 P2d 13 (1988)).<sup>(5)</sup>

In some instances, taxes may be legally dedicated for the payment of bonded debt, even though they were levied for general operating purposes and not expressly for the payment of bonded debt. For example, if a school district has issued bonds without an election for the payment of liability under an integration contract with the Oregon Public Employees' Retirement Board and uses a portion of any tax levied by the district for general operating purposes to pay the principal and interest on those bonds, ORS 238.685(2)(a) requires the district to allocate a portion of the tax levy solely to pay that

bonded debt. In this situation, the school district would have no reason to impose a levy for the specific purpose of repaying these bonds; it could simply rely on its general operating levy as a source of funds from which to satisfy that obligation. The portion of the general operating levy that is necessary to pay this bonded debt is statutorily dedicated to that particular use, and cannot be used to pay other expenses of the district. *Id.*

One apparent rationale for excluding existing bonded debt from the section 11g limitation is to avoid the impairment of pre-existing contractual obligations of the taxing unit. As illustrated by ORS 238.685(2)(a), there will be situations in which the taxing unit may require funds from a general operating levy to satisfy its pre-existing bond obligations. Such a use was entirely permissible under the system of taxation in place when section 11g was approved by the people.<sup>(6)</sup> Considering this context, therefore, we conclude that the phrase "levied to pay" was not intended to require that the taxes be levied for the specific purpose of paying bonded debt.

For practical reasons, we also believe that it is not enough that the taxes merely be available for the payment of bonded debt or be actually used for that purpose at some point during the tax year in which they are levied. It is clear that taxes "levied to pay bonded indebtedness or interest thereon" must be determinable *before* the property taxes are actually assessed. Otherwise, it would not be possible to determine whether the 1997-98 taxes comply with the limitation imposed by section 11g because it would not be clear which taxes are subject to that limitation.

To meet this determinability standard, two things are required. First, the taxes must be legally dedicated to the payment of bonded debt during the 1997-98 tax year in which they are levied, and must not be available to the taxing unit for any other purpose.<sup>(7)</sup> Second, the *amount* of the taxes dedicated to that purpose must be identifiable before the taxes are assessed.<sup>(8)</sup>

#### **4. Differences Between Language of Section 11g(1) and (2)**

The operative references to taxes levied to pay bonded indebtedness in section 11g(1) and (2) are slightly different. In calculating the property tax limitation for tax year 1997-98, section 11g(1) *excludes* the portion of "the tax that is levied to pay bonded indebtedness or interest thereon." Section 11g(2)(b) *exempts* from the three percent limitation "the portion of the *property* tax that is levied *on each property for the payment of* bonded indebtedness or interest thereon." (Emphasis added.)

Irrespective of these slight differences in wording between the two provisions, both are apparently based on the same rationale -- the protection of pre-existing contractual obligations -- and both are subject to the same practical considerations -- the exempt amount must be determinable before a tax assessment can be made for the year to which the limitation applies. Because the two provisions appear to be based on the same policy and practical considerations, we believe that the slight difference in wording was not intended to create any difference in meaning.

Accordingly, we conclude that the phrases "tax that is levied to pay bonded indebtedness or interest thereon" and "tax that is levied on each property for the payment of bonded indebtedness or interest thereon" in section 11g(1) and (2)(b) have the same meaning. In both cases, the tax need not have been levied for the express purpose of paying bonded debt. However, the tax must be legally dedicated to the payment of bonded debt and the amount of the tax so dedicated for any tax year must be determinable before the property taxes for that year are assessed.<sup>(9)</sup>

#### **B. Taxes to Pay Urban Renewal Bonds**

You next ask whether taxes to pay urban renewal bonds are within the scope of taxes "levied to pay" or "levied on each property for the payment of" bonded debt, for purposes of section 11g(1) and (2)(b). We have previously discussed in detail the system of financing urban renewal projects through tax increment revenues. 46 Op Atty Gen 388, 429-30 (1990); Op Atty Gen No. 8243, at 16. In Op Atty Gen No. 8243, we concluded that, to the extent tax increment revenues are to be used to pay bonded indebtedness incurred by an urban renewal agency, they are not subject to the limitations in section 11g(1) and (2). We reaffirm that conclusion here. *See* 44 Op Atty Gen at 124 ("Literally, 'bonded indebtedness' would include general obligation bonds, tax increment bonds and revenue bonds among others."). Nevertheless, for the reasons discussed above with respect to bonded indebtedness generally, tax increment revenues should be treated as exempt only if they are legally dedicated to the payment of bonded debt and if the amount so dedicated is identifiable before the assessment is made.<sup>(10)</sup> See Part V of this opinion for further discussion of urban renewal taxes and the voter approval requirements in section 11g(3)(a).

#### **C. Treatment of Taxes Levied to Pay Bonded Debt in the Two Comparison Years, 1994-95 and 1995-96**

Section 11g(1) limits the 1997-98 ad valorem property taxes that may be assessed on each property, but specifically

excludes taxes to pay bonded debt and interest thereon (bond taxes) from the ad valorem property taxes that are subject to this limitation. This limitation on the 1997-98 ad valorem property taxes is based on the ad valorem property taxes imposed on each property for two "comparison" tax years, 1994-95 and 1995-96. Section 11g(1) provides in relevant part:

[T]he ad valorem property tax on each property for the tax year 1997-98, **excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon**, shall not exceed the lesser of the following: (i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995.

(Emphasis added.) Thus, the limitation on 1997-98 ad valorem property taxes, excluding bond taxes, is equal to the lesser of (a) 90 percent of the ad valorem property tax on the same property for the 1995-96 tax year, or (b) 100 percent of the ad valorem property tax on the same property for the 1994-95 tax year.

You ask whether, in calculating this limitation, the taxes to pay bonded debt are to be included or excluded from the taxes in the two comparison years, 1994-95 and 1995-96. The following example illustrates this question:

**Example:** Assume that the property taxes on Property Z are:

<u>Year</u>	<u>Bond Taxes</u>	<u>Non-Bond Taxes</u>	<u>Total Taxes</u>
1994-95	\$150	\$1,850	\$2,000
1995-96	\$150	\$1,950	\$2,100
1997-98	\$150		

**Bond taxes included:** If bond taxes are included in the comparison years' taxes, then the maximum amount of Property Z's non-bond taxes for 1997-98 would be \$1,890, i.e., the lesser of \$1,890 (90% of the total taxes for 1995-96) or \$2,000 (the total taxes for 1994-95). The maximum amount of Property Z's total property tax would be \$2040 (\$1890 non-bond taxes plus \$150 bond taxes).

**Bond taxes excluded:** If bond taxes are excluded from the comparison years' taxes, then the maximum amount of Property Z's non-bond taxes for 1997-98 would be \$1,755, i.e., the lesser of \$1,755 (90% of the non-bond taxes for 1995-96) or \$1,850 (the non-bond taxes for 1994-95). The maximum amount of Property Z's total property tax would be \$1,905 (\$1,755 non-bond taxes plus \$150 bond taxes).

We conclude that bond taxes are to be **included** in the comparison years' property tax. We reach this conclusion by applying the method of constitutional interpretation adopted by the Oregon Supreme Court in 1993 and followed regularly since then: an enactment's meaning is determined by examination of its text and context; if and only if that examination leaves doubt as to the meaning, the court will examine extrinsic sources. *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610-12, 612 n 4, 859 P2d 1143 (1993). In light of the applicable rules of interpretation, the text of section 11g(1) permits only one interpretation. That is, bond taxes are not excluded from the comparison years' taxes.

## 1. The Oregon Supreme Court and the Interpretation of Initiated Constitutional Amendments.

In *PGE*, the Oregon Supreme Court established a methodology under which the text and context of a provision constitute a "first level" of inquiry, a primary and preeminent source of discerning the enactors' intention. 317 Or at 610-11.

"Text" refers to the words of the provision viewed in isolation, and "context" means at least "other provisions of the same [enactment] and other related [enactments]." *Id.* Also included in the "first level" are rules of grammar, dictionary definitions and common law or statutory rules of construction that "bear directly on how to read the text." *Id.* at 611. If text and context, after application of necessary rules, are not ambiguous, "further inquiry is unnecessary." *Id.* Under *PGE*, in other words, the court will move beyond text and context to the "second level" -- legislative history -- only if text and context support a "plausible alternative reading." *Coultas v. City of Sutherlin*, 318 Or 584, 590, 871 P2d 465 (1994).

The *PGE* template for statutory analysis applies to initiated constitutional provisions. 317 Or at 612 n 4; *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 559, 871 P2d 106 (1994). When dealing with such provisions, the second level materials for discerning history include ballot titles, explanatory statements and arguments in voters' pamphlets, news stories and editorials. *Id.* at 559, 560 n 8. As the court noted in several pre-*PGE* cases, the presumption in favor of text and context over historical materials is "doubly applicable when the law in question is a constitutional amendment adopted by the voters. There is no reliable record of what the voters intended beyond the language of the amendment itself." *Northwest Natural Gas Co. v. Frank*, 293 Or 374, 381, 648 P2d 1284 (1982), cited in Op Atty Gen

No. 8243 (construing section 11g(1)); accord *OEA v. Roberts*, 301 Or 228, 231, 721 P2d 833 (1986) ("If the wording of the section is unambiguous, it is irrelevant what proponents of the measure contended that the effects of the measure would be"); *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993) ("if the intent is clear based on the text and context of the constitutional provision, the court does not look further").

## 2. Text and Context of Section 11g(1)

### a. Text

The words of section 11g(1), viewed in isolation, cannot plausibly be interpreted to mean that the comparison years' taxes exclude bond taxes. The provision reads:

[T]he ad valorem property tax on each property for the tax year 1997-98, ***excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon***, shall not exceed the lesser of the following: (i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995.

(Emphasis added.) In this provision, the phrase "ad valorem property tax" is used three times -- in reference to the 1997-98 taxes, the taxes for the tax year ending June 30, 1996, and the taxes for the tax year ending June 30, 1995. For one of those uses, the reference to 1997-98 taxes, the phrase expressly excludes bond taxes; the clear, common sense implication is that the other uses of the phrase *do* include bond taxes. Rules of construction directing how to read text confirm this interpretation. "[U]se of a term in one section and not in another section of the same statute indicates a purposeful omission." *PGE*, 317 Or at 611; accord *State ex rel Hall v. Riggs*, 319 Or 282, 289, 877 P2d 56 (1994) (when legislature could have put limiting phrase next to all terms in statute but did not, presumption arises that the omission was intentional); *Bayridge Assoc. Ltd. Partnership v. Dept. of Rev.*, 321 Or 21, 31, 892 P2d 1002 (1995).

Further, in order for the "excluding" clause to apply to the comparison years' taxes, that clause would have to modify not only the phrase that is immediately antecedent to it, i.e., "ad valorem property tax for each property for the tax year 1997-98," it would also have to modify the phrases that constitute clauses (i) and (ii), which occur after the modifier and separated from it by eight words, a colon and a parenthetical. The English language does not work that way. Modifiers typically modify only the nearest antecedent. As the Oregon Supreme Court recently held, "Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent." *State v. Webb*, 324 Or 380, 386, 927 P2d 79 (1996) (quoting Norman J. Singer, 2A Sutherland Statutory Construction § 47.33, at 270 (5th ed 1992)). This rule is known as "the doctrine of the last antecedent," a "long-recognized grammatical principle used in interpreting the text of statutes." *State v. Webb*, 324 Or at 386.

To reach the conclusion that the comparison years' ad valorem property taxes in clauses (i) and (ii) exclude bond taxes, the court would have to add the exclusion clause to each of those clauses. A "first level" maxim of construction instructs that the court will not add words that have been omitted. *PGE*, 317 Or at 611 (quoting ORS 174.010).

There can be no doubt about the plain meaning of section 11g(1) viewed in isolation. To apply the "excluding" clause to the comparison years' taxes would require us to rewrite the language of section 11g(1), which is contrary to one of the first level maxims of construction.

### b. Context

The Oregon court recognizes, however, that words do not exist in isolation; they exist in context. That context has not only the potential to clarify an apparently ambiguous term, but, more relevant to this inquiry, it has the potential to condition or alter the meaning of an apparently *un*ambiguous term. See, e.g., *Martin v. City of Albany*, 320 Or 175, 181, 880 P2d 926 (1994). The textual meaning of the sentence, "This theater is on fire; please leave" is, in isolation, unambiguous. If uttered by an actor in a film being played on video in a living room, the apparently unambiguous meaning of the phrase in isolation turns out not necessarily to be the "real" meaning. For this reason, "context" along with "text" is in the first level of inquiry under *PGE*. 317 Or at 610-11.

Accordingly, we turn to an examination of the context within which section 11g(1) occurs.<sup>(11)</sup> No other provisions of Article XI, section 11, directly call into question the literal meaning of section 11g(1). In other words, there is no other part of Article XI, section 11, that uses the same terminology or phraseology as section 11g(1) in such a way as to indicate that the reader of section 11g(1) should disregard or modify the literal meaning. Section 11g(2), as we note below, uses the term "ad valorem property taxes" in paragraph (a) and contains an exclusion for bond taxes in paragraph (b). Section

11g(2) is itself ambiguous with respect to the scope of the bond tax exclusions. But we believe that the existence of an ambiguous term in one part of a statute cannot detract from the clarity of the same term in another part.

Other intrinsic sources within section 11g that constitute relevant context indicate that section 11g is intended first to reduce property taxes, then to slow their increase. For example, section 11g(1) requires that 1997-98 property taxes "shall not exceed" the lesser of the two comparison years' taxes, thereby imposing a ceiling but not a floor on 1997-98 property taxes. Section 11g(2) likewise imposes ceilings on future property taxes. Section 11g(3) imposes restrictions on the creation of "new or additional" taxes. Section (8)(b) refers to the "reductions and limitations set forth elsewhere" in section 11g.

Thus, section 11g may be viewed as imposing two commands on governments. The *text* of section 11g(1) explicitly and unambiguously commands that governments calculate maximum 1997-98 property taxes in a specific fashion, that is, by including bond taxes in the comparison years' taxes. The *context* inferentially and vaguely commands that governments first reduce property taxes and then slow the increase in those taxes. The question then becomes whether the second command provides grounds to doubt or modify the plain meaning of the first command.

We believe that it does not. First, cases after *PGE* clearly hold that an apparently clear and unambiguous meaning derived from the text of an enactment should prevail when confronted with a less clear, ambiguous contrary meaning derived from the context of the enactment. *State v. Vasquez-Rubio*, 323 Or 275, 282-83, 917 P2d 494 (1996). A party seeking to use context to create ambiguity from apparently unambiguous text faces an "uphill fight." *State ex rel Hall v. Riggs*, 319 Or 282, 286, 877 P2d 56 (1994); accord *Hathaway v. Health Future Enterprises*, 320 Or 383, 389, 884 P2d 549 (1994) (textual "obstacles" preclude application of context to create plausible alternative); *State ex rel Juv. Dept. v. M.T.*, 321 Or 419, 427, 899 P2d 1192 (1995) ("specificity of text" makes argument based on context "unpersuasive"). In a subsequent case expanding on *PGE*, the Oregon Supreme Court found that a particular statement of purpose in one segment of a provision superseded and rendered meaningless a general statement of intent located in another. *Cash Flow Investors, Inc. v. Union Oil Co.*, 318 Or 88, 96, 862 P2d 501 (1993). Here, a particular intent is found in the text of section 11g(1): maximum 1997-98 property taxes are to be calculated according to an explicit formula embodied in section 11g(1). A general intent is found in the context of both section 11g(1) and the remaining subsections of section 11g: the application of this formula and the other provisions in section 11g are to yield a reduction of and a limitation on property taxes. Under the relevant rule of construction, the particular intent prevails.<sup>(12)</sup>

### 3. Conclusion

We therefore conclude that the text and context of section 11g(1) do not suggest a "plausible alternative reading," *Coultas v. City of Sutherlin*, 318 Or at 590. The plain meaning of the text is expressed in words of unquestioned grammatical clarity; it is grounded in numerous, well-settled rules of construction and universally accepted principles of syntax. The "context" that bears on that plain meaning and might lead the court to abandon it is inferential, imprecise, sparse and ultimately of little weight. Deviating from the plain meaning, in other words, requires a wrenching force, and the context is not adequate to the task. We do not believe that the language of section 11g(1) can be read as though the "excluding" clause applied to the tax years referenced in clauses (i) and (ii); to do so would require us to rewrite section 11g(1).

### 4. Caveat

Because the Oregon Supreme Court has not provided specific guidance as to when language is so unambiguous that no other meaning is plausible, we have no existing body of case law to consult in formulating our advice. Instead, we extrapolate from the existing Oregon jurisprudence of constitutional interpretation. Such extrapolation is always imprecise; in the area of statutory and constitutional interpretation in the wake of *PGE*, it is made even more so by the fact that for the Oregon courts this area of law is not a finished product but a work in progress. Further, we candidly acknowledge that your question presents a complex and difficult issue. It is possible that the Oregon Supreme Court could reach a conclusion different from ours. To do so, the court would need to proceed as follows.

To begin, the court would need to conclude both that there is a "plausible alternative" interpretation of section 11g(1) and that the context surrounding section 11g(1) casts doubt on the literal meaning. *Coultas v. City of Sutherlin*, 318 Or at 590. Those findings would then justify recourse to second level sources for determining the voters' intent such as legislative history, which, in the case of initiated constitutional amendments, includes the ballot title, explanatory statement and arguments in the voters' pamphlet, news stories and editorials. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or at 559, 560 n 8. Second, the court would need to find support in these sources for the proposition that the purpose of section 11g(1) was not merely to reduce property taxes, but to roll them back to the level they were in 1994-95 or 90 percent of the level they were in 1995-96, exclusive of bond taxes levied in those years. Third, the court would then have

to decide that the extrinsic evidence considered in conjunction with the text and context (which, of course, still has primacy in importance) transforms what is merely a "plausible alternative" meaning into the correct meaning. We have considered this possibility and do not regard it as likely.

We are aware that the issue of the proper calculations of the limitations under section 11g(1) and (2) has a very substantial effect on the estimate of the fiscal impact of these provisions. The conclusion we reach about the inclusion of taxes to pay bonded indebtedness in the comparison years' taxes for purposes of section 11g(1) results in a substantially lower amount of tax reduction than the alternative interpretation. The meaning of this constitutional provision is ultimately a question for the courts. Although we have relied on the principles that we believe the courts will apply when dealing with these issues and have reached the conclusion that we believe the courts will reach, we must caution that these conclusions are not certain. With this in mind, there is an obvious risk in relying on our conclusion without a decision by the Oregon Supreme Court interpreting section 11g(1). As an alternative to that judicial decision, we note that, in light of our response to your third question, the Legislative Assembly could choose to base 1997-98 ad valorem property taxes on comparison years' taxes that exclude bond taxes.

#### **D. Meaning of "Tax for the Previous Year" in Section 11g(2)(a)**

Section 11g(2) imposes a limitation on post-1997-98 increases in ad valorem property taxes, stating in pertinent part:

(a) For tax years following tax year 1997-98, \* \* \* the ad valorem property tax on each property shall not exceed *the tax for the previous year*, plus three percent (3%).

(b) The portion of the property tax that is levied on each property for the payment of bonded indebtedness or interest thereon is exempted from the three percent (3%) annual increase limitation set forth in (a) of this subsection.

(Emphasis added.) Paragraph (a) states a simple formula for calculating maximum property taxes after 1997-98, i.e., the maximum tax for any year equals 103 percent of the tax for the previous year. Paragraph (b), however, introduces a complication by stating an exemption from the limitation for taxes used to pay bonded indebtedness or interest thereon (bond taxes).

Your next question deals with that complication. You ask whether "the tax for the previous year" in section 11g(2)(a), which is the baseline from which a three percent growth in taxes is permitted, includes or excludes bond taxes. We conclude that bond taxes are to be excluded from the prior year's tax.

Based on the language in paragraph (b) that bond taxes are "exempt" from the three percent limitation, it seems clear that the limitation contained in section 11g(2) is intended to apply only to non-bond taxes, i.e., bond taxes may increase in excess of three percent. This approach is consistent with the approach taken in section 11g(1), which expressly provides that its limitation applies only to non-bond taxes. What is less clear is whether bond taxes are to be completely disregarded in calculating and applying the limitation or whether they are merely to be excluded from the taxes to which the limitation applies.

The following example will illustrate the two possible interpretations of section 11g(2):

**Example:** Assume that the property taxes on Property Y are as follows:

<u>Year</u>	<u>Bond Taxes</u>	<u>Non-Bond Taxes</u>	<u>Total Taxes</u>
1997-98	\$200	\$1,800	\$2,000
1998-99	\$250		

**Alternative 1:** If the "tax for the previous year" includes bond taxes, then the tax on Property Y for 1998-99 will be \$2,060 (103% of \$2,000) plus \$250 (the 1998-99 bond tax) for a total property tax of \$2,310.

**Alternative 2:** If the "tax for the previous year" excludes bond taxes, then the tax on Property Y for 1998-99 will be \$1,854 (103% of \$1,800) plus \$250 (the 1998-99 bond tax) for a total property tax of \$2,104.

Again relying on the framework set forth in *PGE*, we begin with the text and context. 317 Or at 611-12, 612 n 4. Only if this first level inquiry presents more than one plausible reading do we move to an examination of extrinsic materials. *Id.*

Section 11g(2) is susceptible to more than one plausible reading. Paragraph (a) contains an unambiguous formula, i.e., maximum property tax for any year equals 103 percent of the property tax for the previous year. The ambiguity lies in subsection (b), which states that bond tax "is exempted from \* \* \* the limitation" set forth in paragraph (a).

Under Alternative 1, bond taxes would be completely disregarded in calculating and applying the limitation. Paragraph (a), read in isolation, limits the current year's "ad valorem property tax" to 103 percent of "the tax" for the previous year. Paragraph (b) provides that "[t]he portion of the property tax" levied to pay bonded debt is "exempted from the \* \* \* limitation set forth in (a)." Paragraph (b)'s reference to "[t]he portion of the property tax" appears to refer back to and modify the terms "ad valorem property tax" and "the tax for the previous year" in paragraph (a). Therefore, the exemption in paragraph (b) may be read as requiring that bond taxes be excluded from "ad valorem property taxes" for purposes of both calculating and applying the limitation in paragraph (a).

Under Alternative 2, bond taxes would be included in the prior year's taxes for purposes of calculating the three percent limitation, but would be disregarded for purposes of applying that limitation to the current year's taxes. Paragraph (a), read in isolation, contains a formula based on "ad valorem property taxes" with no exclusion for bond taxes. Paragraph (b) states that bond taxes are "exempted from the \* \* \* limitation." This may be interpreted as exempting bond taxes only from the results of applying the limitation. In other words, the three percent limitation would be computed by including bond taxes for the previous year, but the resulting amount would be imposed as a limitation only on non-bond taxes for the current year.

Because there are two plausible readings, we believe that the court would consult extrinsic sources to determine the voters' intent. In construing an initiated constitutional amendment, the relevant extrinsic sources include the ballot title and explanatory statement, voters' pamphlet arguments by proponents and opponents, contemporary news accounts and editorial statements. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or at 559, 560 n 8. We have consulted these sources and find nothing that would shed additional light on the question. The materials contain statements that the intention of section 11g in general is to limit future property taxes to three percent per year, but the same materials state that bond taxes are exempted.<sup>(13)</sup> These materials do not solve the riddle -- they simply restate it. Because the extrinsic materials are not helpful, we return to the text to determine which of the two alternative readings is the more reasonable.

Both alternatives are plausible readings of paragraph (b). However, Alternative 2 creates some tension between the two paragraphs in section 11g(2). This is because paragraph (a) appears to contemplate that "the tax for the previous year" on which the limitation is based will be the same type of tax as the tax being limited during the current year. If Alternative 2 is applied, the resulting formula would limit non-bond taxes for the current year based on total taxes (bond and non-bond) for the previous year. Alternative 1, on the other hand, would result in a formula that limits non-bond taxes for the current year based on non-bond taxes for the previous year. For this reason, we believe that Alternative 1 is the more reasonable. It is more likely that the voters intended to adopt a limitation based on like categories of taxes. Therefore, we conclude that bond taxes are excluded from "the tax for the previous year" in calculating the three percent growth limitation in section 11g(2).

## II. Exceptions in Subsections (3), (4) and (5)

Your next set of questions concerns the effect of the exceptions in subsections (3), (4) and (5) on the tax limitations imposed by section 11g(1) and (2).

Section 11g(1) states:

*Except as provided in subsections (3), (4), and (5) of this section*, the ad valorem property tax on each property for the tax year 1997-98, excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon, shall not exceed the lesser of the following: (i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995.

(Emphasis added.) Section 11g(2)(a) states:

For tax years following tax year 1997-98, *except as provided in subsections (3), (4), and (5) of this section*, the ad valorem property tax on each property shall not exceed the tax for the previous year, plus three percent (3%).

(Emphasis added.)

The exceptions in subsections (3), (4) and (5) each address different subjects. Subsection (3) prohibits new or additional taxes unless certain voter approval requirements are met. Subsection (4) covers a variety of situations that affect property values, including property improvements and zoning changes. Subsection (5) covers situations in which the subject property loses eligibility for a property tax exemption or special assessment.

### **A. Effect of Exceptions on Generally Applicable Limitations**

You first ask whether the limitations under section 11g(1) and (2) apply in situations covered by subsections (3), (4) and (5). For the reasons discussed below, it is our opinion that the limitations in section 11g(1) and (2) are not intended to apply in situations that are subject to subsections (3), (4) or (5).<sup>(14)</sup>

We begin by examining the text of section 11g. The "except as provided" clauses in section 11g(1) and (2) are identical. In each case, the applicable limitation is preceded by the phrase "except as provided in subsections (3), (4), and (5) of this section." One possible interpretation of this language is that the limitations in section 11g(1) and (2) simply do not apply to situations covered by subsections (3), (4) and (5). However, it is also possible to interpret those clauses as incorporating special rules that supplement or qualify the limitations in section 11g(1) and (2). Thus, it is necessary to examine the language of subsections (3), (4) and (5) to determine how the exceptions are intended to apply.

Subsections (3), (4) and (5) each contain specific tax limitations that apply to situations covered by those subsections. For example, subsection (4) provides that if property is improved during or after the 1994-95 tax year, the property taxes on that property must not exceed "the lesser of (i) the average ad valorem property taxes paid on similar properties similarly valued and located in the same taxing code area, or (ii) the ad valorem property taxes on the property without regard to the new or additional improvements, plus the ad valorem property taxes on the improvements at the same dollar to value ratio as paid on the property without the improvements." Under subsection (5), if a property is disqualified for a property tax exemption or special assessment, the ad valorem property taxes for the year following the disqualification cannot exceed the average taxes paid on "similar property similarly valued in the same taxing code area." Subsection (3), which requires voter approval of new or additional taxes, does not include an express limitation. By necessary implication, however, any increase in taxes authorized by subsection (3) would be limited to the amount approved by the voters.

The fact that subsections (3), (4) and (5) provide separate, independent property tax limitations for the situations described in those subsections supports the conclusion that, in such situations, the applicable limitation is the one set forth in subsection (3), (4) or (5), as appropriate, rather than the limitation in section 11g(1) or (2). In addition, we conclude that subsections (3), (4) and (5) contemplate tax increases in excess of the generally applicable limitations in section 11g(1) and (2).

In all but one of the situations covered by subsections (4) and (5), tax increases in excess of the three percent limitation in section 11g(2) are expressly authorized.<sup>(15)</sup> Although subsection (3) does not by its terms authorize tax increases in excess of the three percent limitation, section 11g(1) and 11g(2) expressly refers to subsections (3), (4), and (5) as *exceptions*. We previously advised you that:

If the requirements for additional levies in subsection (3) were intended to be cumulative to the tax roll back and growth limitation, there would be no reason to except them from the application of the roll back and growth limitation. Typically, statutory construction avoids rendering any language superfluous. Therefore, the language "except as provided in subsection[ ] (3) . . ." contained in subsections (1) and (2) should be interpreted to have significance. The exception language only has meaning if it is read to exclude from the roll back and growth limitation new and additional levies that meet the voter approval requirements of subsection (3)(a).

Letter dated October 17, 1996, from Thomas A. Balmer, Deputy Attorney General, to Richard Munn, Director, Department of Revenue, at 2.

Subsections (3), (4) and (5) expressly authorize or clearly contemplate property tax increases in excess of the three percent limitation of section 11g(2), and impose specific limitations that apply to the situations covered by those subsections. We therefore conclude that the three percent limitation of section 11g(2) does not apply to any situation covered by subsection (3), (4) or (5). Instead, each situation covered by subsection (3), (4) or (5) is subject to the specific limitation imposed by the applicable exception.

The next issue is whether the limitation of section 11g(1) applies to situations covered by subsections (3), (4) and (5). Those subsections do not expressly authorize property taxes in excess of the limitation in section 11g(1). It is therefore possible to argue that the exceptions in subsections (3), (4) and (5) were not intended to apply to the 1997-98 tax year.

However, that interpretation would render the "except as provided" clause in section 11g(1) utterly meaningless. Although the issue is not entirely free from doubt, we believe that the better interpretation is one that gives effect to that clause.

The language of subsection (4)(a) further supports this interpretation. That provision specifically states that property taxes may be increased in excess of the three percent limitation in section 11g(2) if the property is improved "during or after the 1994-95 tax year." Property improvements made during a tax year are taken into account, or "captured," in the tax assessment for the immediately following year. The obvious rationale for the subsection (4)(a) exception is that the taxes assessed for a year in which improvements are made, which are based on the value of the unimproved property, do not provide an appropriate basis on which to calculate a property tax limitation for the improved property.

The first tax year to which the three percent growth limitation in section 11g(2) applies will be 1998-99, based on the property taxes assessed on that property for 1997-98. If the subject property was improved during 1994-95, 1995-96 or 1996-97, the assessment for 1997-98 would be based on the value of the improved property and therefore would provide an appropriate basis for calculating the three percent growth limitation for 1998-99 property taxes. Thus, there is no need for an exception to the section 11g(2) three percent growth limitation for property improvements made during 1994-95, 1995-96 or 1996-97.

On the other hand, property improvements made during 1994-95, 1995-96 or 1996-97 generally would affect the section 11g(1) limitation for 1997-98. This is because the section 11g(1) limitation is based on the lower of the property taxes assessed for 1994-95 or 90 percent of the property taxes assessed for 1995-96. If the property is improved during 1994-95, the 1994-95 taxes would have been based on the value of the unimproved property and the 1995-96 taxes would have taken into account the value of the improvements. If the property is appreciating in value, 1994-95 would likely be the relevant comparison year because the taxes for that year are likely to be more than 10 percent lower than the taxes for 1995-96.<sup>(16)</sup> If the property is improved during 1995-96 or 1996-97, the taxes for both comparison years would be based on the unimproved value of the property. Regardless of whether the property was improved in 1994-95, 1995-96 or 1996-97, therefore, the taxes for the relevant comparison year probably would be based on the value of the unimproved property, while the relevant value for purposes of assessing the 1997-98 tax would be the value of the improved property. As noted above, taxes based on the value of the unimproved property would not provide an appropriate basis for calculating the 1997-98 taxes on the improved property.

For these reasons, the reference in subsection (4)(a) to property improvements made during the 1994-95, 1995-96 and 1996-97 tax years would be meaningless unless subsection (4)(a) is intended to be an exception to section 11g(1). Similarly, subsection (4)(b) specifically requires that the 1997-98 property tax be reassessed in certain circumstances. Although there are no references to specific tax years elsewhere in subsections (3), (4) and (5), neither is there any indication that those provisions were not intended to apply to the 1997-98 tax year. Moreover, as noted above, all three subsections are expressed as "exceptions" to the limitation in section 11g(1). Accordingly, we conclude that the exceptions in subsections (3), (4) and (5) apply to the 1997-98 tax year.

Because the exception language in section 11g(1) is identical to that of subsection (2), we further conclude that the exceptions apply to section 11g(1) in the same way that they apply to section 11g(2). In other words, the 1997-98 taxes are not subject to the general limitations in section 11g(1) and (2) to the extent that those taxes arise under the circumstances described in subsections (3), (4) and (5).

## **B. Taxes on Improvements as an Exception to Section 11g(1)**

You also ask specifically whether section 11g(4)(a) permits ad valorem property taxes for tax year 1997-98 to be increased by reason of improvements to the property made during tax years 1994-95, 1995-96 or 1996-97, notwithstanding the limitation imposed by section 11g(1). We concluded above that the limitation in section 11g(1) does not apply to situations covered by the exceptions in subsections (3), (4) and (5). Thus, if subsection (4)(a) applies for purposes of calculating the 1997-98 property taxes on a property, those taxes are not subject to the general limitation in section 11g(1) and may be increased to the extent permitted by the special limitation in subsection (4)(a).

Subsection (4)(a) does not specifically state when the special limitation for improved property applies for purposes of calculating the 1997-98 property tax. As discussed above, property improvements made during the relevant comparison year (1994-95 or 1995-96) or 1996-97 would affect the limitation on 1997-98 property taxes under section 11g(1), rather than the three percent growth limitation under section 11g(2). We therefore conclude that if the subject property is improved during the relevant comparison year 1994-95, 1995-96 or 1996-97, the 1997-98 property tax is subject to the special limitation for improved property under subsection (4)(a), rather than the general limitation under section 11g(1).<sup>(17)</sup>

### III. Legislatively Imposed Property Tax Limitations

Your next question asks whether any provision of the Oregon Constitution would prohibit the Legislative Assembly from providing by law limitations that are more restrictive than the limitations found in Article XI, section 11g. We conclude that the Legislative Assembly may enact more restrictive limitations on ad valorem property taxes without violating any provision of the Oregon Constitution.

The hypothetical legislation posed by this question raises two issues. The first goes to the size of the property tax reduction: Does anything in the Oregon Constitution (including section 11g itself) limit the *extent* to which ad valorem property taxes might be lowered? The second issue goes to the identity of the taxing authority: Does anything limit the *legislature's* power to impose these reductions?

Limits on either the extent of reduction or the power of the legislature might be found within Article XI, section 11g itself, or elsewhere in the Oregon Constitution.<sup>(18)</sup> We first consider section 11g itself and then other relevant provisions of the constitution.

#### A. Article XI, Section 11g

While section 11g contains some ambiguous language and poses some interpretational difficulties, it does not equivocate regarding its overall purpose. It is, and was widely described as, a measure to reduce and then limit property taxes. In accord with this purpose, section 11g(1) and (2) require taxing authorities to fix each property's ad valorem property tax for 1997-98 at an amount "not to exceed" a specified figure, and then in future years to limit increases to an amount "not to exceed" three percent of the previous year's figure. The phrase "not to exceed" can be read only to establish a ceiling, not a floor; a taxing authority's decision to remain anywhere below that ceiling would not violate the letter or the spirit of section 11g. Indeed, nothing in section 11g requires any taxing authority to levy or assess any property tax whatsoever.

Regarding the authority of the legislature (as opposed to that of local governments) to implement reductions, the only language in section 11g that might suggest some limitation on interference with local prerogatives is in section 11g(7), which states:

If it is necessary to allocate among political subdivisions of the state, or departments or agencies within those political subdivisions, any revenue reductions resulting from this Act, redistribution of revenues shall be done in a manner so as to \* \* \* ***minimize any loss of local control of cities and counties to state government.***

(Emphasis added.) This nebulous command is in some tension with section 11i, which explicitly provides that "[t]he Legislative Assembly may adopt and amend legislation to implement the provisions of sections 11g and 11h of this Article."

We have previously advised that the command to "minimize" loss of local control in section 11g(7) would have little impact beyond restricting the legislature's authority to directly dictate local governments' spending priorities. Op Atty Gen No. 8243, at 12. The legislation hypothesized in your question does not engage in that forbidden task. Keeping in mind the principle of plenary legislative authority<sup>(19)</sup> and the text of section 11i, we conclude that section 11g does not itself prohibit the legislature from enacting the kind of statute hypothesized by your question.

#### B. Limits in Other Constitutional Provisions

The first clause of section 11g deals with interaction between that section and other parts of the Constitution, announcing that the section applies "[n]otwithstanding Section 32, Article I, Section I, Article IX, Section 11, Article IX, or any other provision of this Constitution." This clause suggests that section 11g cannot be limited by any other provision and, therefore, that any statute or ordinance enacted pursuant to section 11g is immune from constitutional scrutiny.

That conclusion, however, does not necessarily follow. Government could not enact a system of property tax assessment that achieved the objectives of section 11g by means of, for example, unreasonable warrantless searches of homes contrary to Article I, section 9; or limitations on assesses' right to protest contrary to Article I, section 8; or an individual appeal process conducted by a legislative committee contrary to Article III. The fact that a provision of the constitution announces that it applies "notwithstanding any other" part does not mean that a statute enacted to achieve the goals of the provision is therefore immune from constitutional scrutiny. That theory proves too much.

The better interpretation of a "notwithstanding" clause is to limit its scope to situations of unavoidable conflict with some

other section -- for example where one section *requires* legislation, or *specifically* authorizes it, "notwithstanding" provisions that prohibit it, or vice versa.<sup>(20)</sup> In other situations, where government actors can obey both constitutional commands simultaneously, they should strive to do so. The hypothetical legislation in your question is not required or specifically authorized by section 11g; nor does any other provision of the Constitution explicitly require a property tax. Government could therefore meet its obligations under both section 11g and other constitutional provisions, for example by simply not levying any property taxes at all. Consequently, we must determine whether the hypothetical legislation meets other constitutional requirements.

## 1. Home Rule Provisions

Your question directs our attention especially to Article VI, section 10, and Article XI, section 2.<sup>(21)</sup> These provisions deal with the "home rule" authority of counties and cities, respectively. The provisions have two separate effects; they both empower local governments, and they limit state government. These effects, however, are not symmetrical. The fact that home rule authority enables local government to act in some arena does not by itself prohibit the state from acting, with preemptive power, in the same arena. "The validity of a state law vis-a-vis local entities does not depend upon \* \* \* whether a locality may have authority to act on the same subject; it depends on the limits imposed by [the home rule amendments]". *La Grande/Astoria v. PERB*, 281 Or 137, 142, 576 P2d 1204 (1978). Thus, the relevant issue here is not whether cities and counties have the authority to enact their own budget and to levy taxes, including property taxes; clearly they do. Rather, the question is whether the home rule amendments take the same power away from the legislature, thereby leaving local government the *exclusive* actor.

The framework for deciding such issues has remained unchanged since 1978 and is by now well-settled.

When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the [home rule] amendments to the citizens of local communities. \* \* \*

Conversely, a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form.

*Id.* at 156 (footnote omitted). We have advised on several occasions that statewide regulation of property taxes would be a general law addressed to economic or regulatory objectives, as opposed to an alteration of the structure and procedures of local agencies. 39 Op Atty Gen 150, 180 (1978); 44 Op Atty Gen 85, 95 (1984); Op Atty Gen No. 8243, at 10. Nothing suggests that conclusion is incorrect. Unless the legislation hypothesized in your question attempted to achieve its objective by imposing procedures on local governments or altering their form -- for example, by dictating that each unit create and fund an elected "Measure 47 Assessor" -- and presuming that it clearly stated its intention to preempt conflicting local enactments, the legislation would not offend the home rule provisions of Article VI, section 10, or Article XI, section 2.

## 2. Uniformity of Taxation Provisions

Two provisions of the Constitution require uniformity of taxation. They provide, in relevant part:

[A]ll taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.

Or Const Art I, § 32.

All taxes shall be levied and collected under general laws operating uniformly throughout the State.

Or Const Art IX, § 1.<sup>(22)</sup>

As we have previously advised, some state legislation implementing section 11g could result in similar parcels of property located in different cities, counties or districts carrying unequal property tax burdens, thus raising "uniformity" problems. Op Atty Gen No. 8243, at 22. Regardless of whether such legislation is immune from constitutional scrutiny under the "notwithstanding" clause of section 11g, it would survive such scrutiny in any event.

In general, the legislature enjoys broad discretion in classifying subjects of taxation. *Tharalson v. State Dept. of Rev.*, 281 Or 9, 16, 573 P2d 298 (1978); *Knight v. Dept. of Revenue*, 293 Or 267, 271, 646 P2d 1343 (1982). In *Jarvill v. City of*

*Eugene*, 289 Or 157, 613 P2d 1 (1980), the court reviewed the history of the uniformity provisions, noting that they had been amended in order to allow for some kinds of non-uniformity. The court concluded that the provisions permitted a taxing authority to classify, and differentially burden, different entities within its territory, so long as it imposed the same rates on members of the same class. The court recognized that a territorial taxing authority could classify geographically by sub-territory, imposing different tax burdens on citizens of different subterritories, so long as rates were uniform within each geographical sub-territory and reflected some actual difference that made the subdivision rational. *Id.* at 180-81. The differences could be "natural," reflecting "differences of nature," or "political," that is, resulting from "political decision, commitment and action." *Id.* Further, differential taxation of geographical or other classes within a single territory are permissible if "those of a single section may reap the principal benefit from a proposed expenditure, as from the construction of a road, a bridge, an almshouse or a hospital." *Cook v. The Port of Portland*, 20 Or 580, 590, 27 P 263 (1891); *State ex rel v. Malheur County Court*, 185 Or 392, 410-11, 203 P2d 305 (1949) (approving state legislation differentially taxing different counties).

It would be difficult to imagine non-uniformity resulting from application of the hypothetical legislation that would be impermissible under these standards. The different rates or amounts in each class might reflect any number of differences. One property may be in a district enjoying natural advantages that the other district lacks, or having made political decisions the other district did not, or benefiting from proposed expenditures that would not benefit the other district. Therefore, unless it could be demonstrated that the different rates were utterly arbitrary, their difference would not violate the uniformity provisions. *Accord* 44 Op Atty Gen at 95-96.

### 3. Article I, Section 20

Article I, section 20, of the Oregon Constitution provides a general guarantee of equality, stating:

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

This section prohibits the legislature from legislating some forms of discrimination, including discrimination based on geographical residence. *State v. Clark*, 291 Or 231, 240, 630 P2d 810, *cert denied*, 454 US 1084 (1981). Since the hypothetical legislation described in your question could result in apparently similar parcels receiving unequal tax burdens depending on their geographical location, Article I, section 20, concerns arise.

Nevertheless, we find it difficult to conceive of legislation limiting property taxes that would violate Article I, section 20. In order to violate this provision, the legislation would have to differentiate taxpayers into classes that: (1) are "true" classes in that they are based on traits such as race or religion that are typically regarded as class-forming even beyond the legislation being challenged, *State v. Clark*, 291 Or at 240; (2) are based on traits that are immutable, *Hewitt v. State Accident Insurance Fund Corp.*, 294 Or 33, 45-46, 653 P2d 970 (1982); and (3) derive from some form of invidious or otherwise improper motivation as opposed to having a basis in genuine differences, *id.* Although geographical distinctions that result in unequal property tax burdens on different taxpayers do reflect a "true" class (geographical location, *see State v. Clark*, 291 Or at 241), the trait is not immutable (those who live in one area and want to avoid the burden imposed by unequal property taxation have it in their power to move). Nor, as discussed above, would the classification system be driven by irrational or invidious motives; rather, it would almost certainly reflect actual natural or political differences. Thus, Article I, section 20, would not prohibit the legislation hypothesized in your question.

### IV. "New" or "Additional" Taxes

Your next set of questions concerns the meaning of the words "new" and "additional" in section 11g(3)(a), which prohibits "new or additional ad valorem property tax levies against real property" on and after December 5, 1996, unless the question of the tax levy has met the voter approval requirements specified in section 11g(3)(a). You also ask whether those terms include certain taxes identified in your question.

The meaning of the words "new" or "additional," within the phrase "new or additional ad valorem property tax levies against real property" is not immediately clear, and section 11g provides no special definition of these terms. In fact, on their face, the words "new" and "additional" are ambiguous. "New" may refer either to the kind of ad valorem property tax or to each iteration of such a tax, whether it is an example of a previously existing kind or not. Likewise, "additional" may call for a comparison to the amount of an existing property tax levy, to the prior year's tax levy, or to the amount of taxes that may be imposed under section 11g. To resolve this ambiguity, it is necessary to identify the reference by which a tax is to be compared or contrasted as "new" or "additional."

We begin by applying general rules of construction. Because neither "new" nor "additional" has a well-established

technical or legal significance, each should be understood in terms of its ordinary meaning. See *Jones v. Hoss*, 132 Or 175, 285 P 205 (1930) and 46 Op Atty Gen 388 (1990) for other citations supporting this principle.

We may begin to determine these ordinary meanings by referring to dictionary definitions. Webster's International includes a number of common definitions of "new," among which the following could apply to section 11g(3)(a):

**2 b** : being other than the former or old : having freshly come into a relation (as use, connection, or function) <turn a ~ leaf> <the ~ teacher> <a ~ product>

**4 a** : beginning or appearing as the recurrence, resumption, or repetition of a previous act or thing <a ~ year> <a ~ start> <a ~ edition>

**5** : different or distinguished from a \* \* \* thing of the same kind or name that has no longer or previously existed <the ~ reservoir> <the ~ theology>

*Id.* at 1522. The same dictionary, at page 24, provides this definition of "additional":

existing or coming by way of addition : added, further

Obviously, the foregoing definitions are of limited value in construing section 11g(3)(a). Additional guidance may be discerned from the context of section 11g, which we are to interpret not on narrow technical principles, but "along broad general lines in order that the object intended may be accomplished." *School Dist. No. 1, Mult. Co. v. Bingham*, 204 Or at 611.

#### A. "New" Taxes

You first ask what is a "new" tax for purposes of section 11g(3)(a). Although not without some doubt, we conclude that, for purposes of section 11g(3)(a), a "new" ad valorem property tax is a new kind of tax that is legally authorized after the effective date of section 11g, not merely another iteration of an existing tax, such as a new serial levy to replace a levy that is expiring, tax increases within a growing tax base under Article XI, section 11, or a one-year or continuing levy.

Some indication of what the voters intended by a "new" tax for purposes of section 11g(3)(a) may be found in other provisions of section 11g that refer to it. For example, section 11g(3)(b) expressly excepts from the special voting requirements "taxes levied for the repayment of bonded indebtedness approved by the voters in an election held prior to the effective date" of section 11g, which was December 5, 1996. Logically, this exception is not necessary unless some ad valorem property taxes levied to pay bonded indebtedness approved prior to the effective date could be considered "new" or "additional" and, therefore, subject to the voting requirements of section 11g(3)(a). For example, such taxes might be considered "new" if the bonds were voter approved prior to the effective date, but the taxes were not. Conversely, a tax that had been approved by the voters prior to the effective date would not be considered "new," and subject to further voter approval.

However, this interpretation does not appear to further the policy of section 11g(1) and (2), each of which excludes from its tax limitation all taxes to pay bonded indebtedness. If all taxes to pay bonded indebtedness are excluded from the property tax limitations, irrespective of voter approval, there is no apparent reason why some bond taxes should be considered "new" and, thereby, subject to the special voter approval requirements of section 11g(3)(a). Such an incongruity suggests that the test of whether a tax is "new" does not depend on whether it has previously received voter approval.

An alternative test of whether a tax is "new" is whether the tax has ever existed before. Then, the issue is whether an ad valorem property tax should be considered "new" with each iteration of such a tax (either of the same kind or different) or only when the tax is different in kind or purpose from the ad valorem property taxes authorized under existing law. To address this issue, we turn to the apparent intent of the constitutional amendment.

As discussed in Part I C of this opinion, the intent of section 11g is to reduce property taxes and then limit their growth. There is no evidence in section 11g of a general intent to make it more difficult for government to impose taxes that otherwise would be subject to the limitations of section 11g(1) and (2). On the other hand, both the firm language of section 11g, generally, and the "anti-transfer" rules of section 11g(8), in particular, evidence a general intent to close "loopholes" in order to realize the property tax relief that is the ultimate purpose of section 11g.

Unquestionably, section 11g applies to existing kinds of ad valorem property tax. It would not be unreasonable, however, for the voters to have assumed that section 11g would not apply to new kinds of ad valorem property taxes that did not

exist at the time section 11g was approved. Accordingly, it makes sense that "new" ad valorem property taxes, for purposes of the special voting requirements of section 11g(3)(a), would be understood to mean "new kinds" of taxes.

We addressed a similar issue in 44 Op Atty Gen 85 (1984), in answering questions related to another property tax limitation measure, Ballot Measure 2 (1984). That measure, like the present one, required that special voting requirements be met before imposition of any "new tax", stating:

(6)(a) Notwithstanding subsection (1), from and after the effective date of this amendment, the State \* \* \* or other taxing unit of or within the state may increase a tax rate or special assessment *or may levy a new tax* or special assessment, if such action would cause an increase in governmental revenues, *only* by a majority vote of the legal voters of the taxing unit voting on the question, provided that at least fifty (50%) of the legal voters of the taxing unit vote on the question.

(Emphasis added.) Interpreting whether these words required specific voter authorization for a district to levy property taxes, either pursuant to a new tax base or outside the existing tax base, we concluded:

Such a tax may be levied without complying with subsection (6) if it neither imposes a new tax nor increases the rate of an existing tax, *or* if it does not increase governmental revenues. \* \* \*

\* \* \* an annual general purpose levy to meet expenses of a taxing unit is not a "new" tax each time it is authorized. A new *kind* of tax, such as motel tax; a tax for a new special purpose, such as a special levy for law enforcement purposes; or a tax made newly applicable to property or persons formerly exempt, is probably a new tax \* \* \*. Even a new tax base, we conclude, is not a new tax, since it simply raises money in the same way for the same purpose against the same property as the previous annual levies.

44 Op Atty Gen at 187.

We see no reason to depart from the foregoing analysis in the course of interpreting the similar provision found in Article XI, section 11g(3)(a). Thus, we conclude that, for purposes of section 11g(3)(a), a "new" ad valorem property tax is a new kind of tax that is legally authorized after the effective date of section 11g, not merely another iteration of an existing tax, such as a new serial levy to replace a levy that is expiring, or a one-year or continuing levy within a growing tax base. However, we caution that the courts might conclude otherwise, finding every new levy of an ad valorem property tax is a "new" tax that requires voter approval, irrespective of previous impositions of such taxes for the same purposes or with the same scope.

## B. "Additional" Taxes

You next ask what is an "additional" tax for purposes of section 11g(3)(a). We conclude that this is a tax that is in addition to the amount of tax that may be imposed under the limits of section 11g(1) and (2).

As with the term "new," in order to understand the meaning of "additional," it is necessary to identify the reference being used for purposes of comparison. The question is: "Additional to what?" There is nothing specific in either the text or the context of section 11g to suggest that "additional" taxes are those that are "in addition to existing taxes" or "in addition to the amount of existing taxes." The first interpretation would seem to be adequately covered by the meaning of the expression "new taxes." The latter interpretation would require voter approval even if the "additional" taxes were under the limitations of section 11g(1) and (2). Thus, it also does not seem to advance the general intent of section 11g.

However, the context does suggest an alternative. Evidence of what the voters intended by the word "additional" in section 11g(3)(a) is found in section 11g(1) and (2), the provisions that prescribe the limitations on ad valorem property taxes for tax year 1997-98 and thereafter. Each of those limitations applies "except as provided in subsections (3), (4), and (5)." This language implies that "additional" means in addition to the taxes that otherwise can be imposed under section 11g.

We reached a conclusion consistent with this interpretation in a letter dated October 17, 1996, to Richard Munn, Director, Department of Revenue, from Thomas A. Balmer, Deputy Attorney General. In that letter, we concluded that, under section 11g(3)(a), voters could approve the levy of ad valorem property taxes that exceed the three percent limitation on the growth of such taxes prescribed in sections 11g(2). This conclusion was based on the rule of construction that all words in a constitutional provision must be given effect if possible; the words in this instance being "except as provided in subsection[ ] (3)," which are found in both section 11g(1) and (2).

Thus, the word "additional" in section 11g(3)(a) refers to the those taxes that are "in addition to" those that may be imposed under the limitations of section 11g(1) and (2).<sup>(23)</sup> The voters may approve such "additional" taxes, subject to the

special voting requirements of section 11g(3)(a).

### **C. Application of "New" to Specific Examples**

You also ask whether, for purposes of section 11g(3)(a), certain taxes should be considered "new" ad valorem property taxes. Based upon our analysis above, we address each of the specific taxes identified in your question.

A new levy of an existing kind of property tax would not be a "new" tax; instead, it is merely another iteration of a tax already authorized by law. For purposes of section 11g(3)(a), "new" taxes would not include a new serial levy to replace a levy that is expiring, another operating levy within a growing tax base or a new continuing levy, these levies are authorized to raise money in the same way, for the same general purposes and against the same properties as authorized under existing law. *See* 44 Op Atty Gen 85, 187 (1984).

Similarly, a tax approved by the voters before December 5, 1996, but levied on or after that date, would be an existing tax, not a "new" tax. This is not a "new" tax because the taxing district had legal authority to impose the taxes by virtue of the voter approval.

"New" tax does not include a tax that is levied on or after December 5, 1996, to repay bonds issued without voter approval before that date, provided the legal authority to impose the tax for payment of that bonded indebtedness existed prior to December 5, 1996. Again, it is not a new "kind" of tax; rather, it is just another iteration of a previously authorized tax.

In your question you provided, as examples of bonds issued before the effective date of section 11g without voter approval, local improvement district bonds, special assessment bonds and a \$13 million retirement bond levy (presumably to fund pension benefits). Because you did not specifically describe or identify particular bonds that were issued before the effective date, we assume that your question is a general one.

We are aware of no feature peculiar to local improvement district bonds, special assessment bonds or bonds issued to fund pension benefits that would change our conclusion. Taxes to pay such bonds are not "new" for purposes of section 11g(3)(a) if, prior to December 5, 1996, there was full legal authority to impose the taxes. Although, special assessment bonds generally require voter approval, *see, e.g.*, ORS 225.360 (city irrigation and fire protection), 476.330 (county fire protection), assuming any such laws authorized bonds without voter approval prior to December 5, 1996, if the law also authorized the imposition of ad valorem property taxes to pay those bonds, the taxes would not be "new." For example, ORS 223.235(4) expressly authorizes the government unit that has issued Bancroft bonds for local improvements, under ORS 223.205 and 223.210 to 223.295, to levy and collect the tax for the payment of the bonds, notwithstanding that the question of the issuance of the specific bonds has not been approved by the voters. Another example is ORS 238.685, which expressly authorizes school districts that are being integrated into the Public Employees' Retirement System to pay part or all of their unfunded obligation to the system with the proceeds of general obligation bonds issued for such purposes. ORS 238.685(2)(a) provides that, to the extent the bonded indebtedness is to be repaid from property tax levy revenues, the levy is to be divided so that one part equals the amount necessary to pay bond principal and interest. This, too, is not a "new" tax.

Likewise, increases in urban renewal ad valorem property taxes arising after December 5, 1996, are not "new" taxes requiring voter approval under section 11g(3)(a), unless the increases are due to a change on or after that date in the laws that impose the tax or a change in the urban renewal plan upon which the tax is based. Because the mechanics of tax increment financing of urban renewal were thoroughly discussed in 44 Op Atty Gen at 134-35, 136-43 and Op Atty Gen No. 8243, at 16, there is no need for lengthy explanation here. For present purposes, the critical fact noted in these earlier opinions is that tax increment revenues are imposed under existing law, Article IX, section 1(c), of the Oregon Constitution and ORS chapter 457. Under that law, urban renewal taxes are imposed on properties upon the adoption of an urban renewal plan and are extended over new territory by an amendment to that plan that changes the boundary. *See* ORS 457.430.

Therefore, increases in such taxes that arise merely from the appreciating value of the property within the urban renewal area are not "new" taxes for purposes of section 11g(3)(a). On the other hand, any tax increase resulting from an amendment of the urban renewal law that changed its purposes or made its taxes newly applicable to persons or property that were formerly exempt, such as a boundary change, would be a "new" tax for purposes of section 11g(3)(a). Such "new" taxes would require voter approval in accordance with that provision.

### **D. Application of "Additional" to Specific Examples**

You also ask whether any of the foregoing examples of taxes would be "additional" taxes for purposes of section 11g(3)(a). To answer this question, we note that the limitations of section 11g(1) and (2) apply to the total ad valorem taxes on each property, not to tax levies themselves. Thus, we conclude that each of the taxes you describe would be "additional" taxes for purposes of section 11g(3)(a) to the extent they are part of a total amount of ad valorem property taxes imposed on a property that would exceed the limitations of section 11g(1) or (2). As discussed in Part I of this opinion, those limitations do not apply to taxes to pay bonded indebtedness. Therefore, taxes to pay bonded indebtedness are not added to the total taxes imposed on a property to determine whether the limitations of section 11g(1) or (2) apply. Because bond taxes are not part of that total amount, they could never be "additional" to the taxes imposed under the limitations.

## V. Increases in Urban Renewal Taxes

Your next question asks how the voter approval requirements of section 11g(3)(a) apply to increases in urban renewal ad valorem taxes. We conclude that increases of urban renewal taxes that are "new" or "additional" require voter approval under section 11g(3)(a). Because neither section 11g nor current law provides for such elections, however, implementing legislation will be necessary if such approving elections are to be held.

Section 11g(3)(a) provides:

On or after the effective date of this section, there shall be no new or additional ad valorem property tax levied against real property, unless the question of the levy has been approved by not less than fifty percent (50%) of voters voting in a general election in an even numbered year, or other election in which not less than fifty (50%) of the registered voters eligible to vote on the question cast a ballot.

The applicability of these requirements to increases in urban renewal taxes hinges on the meaning of the words "ad valorem property tax," "new" and "additional," and "levy" in section 11g(3)(a), and also upon the mechanism by which urban renewal taxes can be increased. We discussed the meaning of "new" and "additional" in Part IV of this opinion.

### A. Ad Valorem Property Taxes

We have not yet considered the specific meaning of the expression "ad valorem property tax" in the context of section 11g.<sup>(24)</sup> The constitutional amendment itself provides no definition of this expression.<sup>(25)</sup> Therefore, we turn to judicially developed principles of construction.

Of course, the voters' intent governs. In this instance, "ad valorem" has a well established meaning in the context of property taxation. Webster's International, at 30, provides this general definition:

**2** : *of a property tax* : levied according to assessed value

In 44 Op Atty Gen 85, 141 (1984), quoting from *Ampco Printing - Adv. Offset Corp. v. City of New York*, 197 NE 2d 285, 288 (NY 1964), we stated:

"Ad valorem" means "according to the value" and is used "to designate an assessment of taxes against property at a certain rate upon its value. An ad valorem property tax is always based upon ownership of property and is payable regardless of whether the property is used or not.

This definition is consistent with the "context" of section 11g, which includes the existing system of property taxation, and the common meaning of these words at the time section 11g was enacted. Although, there is no general definition of "ad valorem property tax" in state statute, all such taxes are subject to ORS 310.090, which provides, in relevant part:

Subject to ORS 310.070, the county assessor shall compute the rate of ad valorem levy for each taxing district by dividing the district's net levy for each category of taxes described in ORS 310.150 by the assessed value [of the taxable property] used to compute the tax rate.

Accordingly, we conclude that, in enacting section 11g, the voters understood "ad valorem property tax" to mean a tax on property that is calculated according to the assessed value of that property.

### B. Tax Increment Financing for Urban Renewal

As noted in Op Atty Gen No. 8243, at 16, we have previously discussed at length the manner in which tax increment revenue is collected from the taxes imposed on property located within an urban renewal district. See 46 Op Atty Gen 388,

429-30 (1990) and 44 Op Atty Gen 85, 136-37 (1984). Therefore, we will only summarize the mechanism here.

The urban renewal agency of a city or county may adopt an urban renewal plan, which causes the assessor to "freeze" the real market values of taxable property within a "blighted" urban renewal area at the time the plan was adopted. *See* ORS 457.430. The assessor computes the tax rate that is necessary to generate the taxes of each taxing district in which all or a part of the urban renewal area is located, by using only the "frozen" value of the property in the plan area when calculating the tax rate of each taxing district. *See* ORS 457.440(5)(a). Once the district rates are calculated, an urban renewal tax is calculated from those rates (each district's excess value times that district's tax rate). The urban renewal revenue is then turned into a type of "levy" amount. This "levy amount" is divided by the value of the "shared property" of the taxing district and the urban renewal agency in order to calculate an urban renewal tax rate for that district. The taxing district rate on the "shared property" is lowered by subtracting the urban renewal tax rate from the taxing district rate. This lower tax rate is then applied to the current real market value of all of the "shared property," and the urban renewal rate is also applied to the current real market value of all of the "shared property." Revenue generated from the district tax rate goes to the taxing district, revenue generated from the urban renewal rate goes to the urban renewal agency.

Accordingly, "tax increment" revenues for urban renewal are a form of ad valorem tax on property.

### C. "Levied" for purpose of Section 11g(3)(a)

We next consider whether urban renewal taxes are "levied" for purposes of section 11g(3)(a), which by its terms applies to certain ad valorem property tax "levies." In Part I C of this opinion, we discussed the meaning of the term "levy" for purposes of section 11g(1) and (2). We concluded that the general meaning of the term includes "the political decision to raise an amount of revenue from taxpayers by a specified formula." *See* p. 11, quoting *Dennehy v. Dept. of Revenue*, 305 Or 595 at 602. However, for purposes of interpreting section 11g(1) and (2), it was not necessary to consider how that general definition would apply to tax increment revenues generated by urban renewal plans. Because of the relatively unique nature of urban renewal taxes, we believe it is appropriate to include a separate analysis in this section of when those taxes are "levied."

In 32 Op Atty Gen 429, 430 (1966), we interpreted "levied" in the context of a proposed constitutional limitation of total property taxes to one and one-half percent of "true cash value" of the property. First we noted: "Technically, a levy is the legislative act, whether state or local, which determines that the tax shall be laid, and fixes its amount." *Id.* However, that is not the only definition.

The word "levy" often, and perhaps, usually, means the determination to impose the tax, as distinguished from assessment and collection. But the word is also susceptible of other meanings, dependent upon the context in which it is used, *and may refer to all the steps, collectively, by which public revenue is raised, or only to the assessment and collection of the tax.*

*Id.* at 430 (citations omitted) (quoting from *In re Zoller's Estate*, 171 A2d 375, 379 (Del 1961)). We concluded that, when this broader meaning was applied to the one and one-half percent property tax limitation, it was clear that the framers of that limitation "intended to limit the total amount of the billing which is made against a given piece of real property." *Id.* at 431.

We see evidence of a similar intent to limit the total ad valorem taxes on property in the limitations of section 11g(1) and 11g(2) and, as noted above, we interpret the voting requirements of 11g(3)(a) consistent with that intent. Specifically, the aim of section 11g is to limit all ad valorem property taxes.

In *Dennehy v. Dept. of Rev.*, 305 Or 595, 756 P2d 13 (1988), the court considered the issue whether urban renewal taxes were to be considered in determining whether total taxes were within the tax base, for purposes of Article XI, section 11, of the Oregon Constitution and, if so, which government's tax base, the city that created the urban renewal agency or the state that authorized the tax increment financing for that agency. The defendant argued, among other things, that the taxes resulting from the increased property values in the urban renewal area are not "levied," because the amount is uncertain. *Id.* at 601. The court ultimately decided that urban renewal revenues are not subject to the tax base limitation because those revenues were akin to special assessments, "to which Article XI, section 11, has been held not to apply." 305 Or 603. However, the court offered these valuable observations concerning whether urban renewal taxes were "levied":

If to "levy" a tax, as distinct from "collecting" a tax, means the political decision to raise an amount of revenue from taxpayers by a specified formula, *see* Black's Law Dictionary 816 (5th ed 1979), that decision was not made by the state when it made available the statutory means of undertaking redevelopment or urban renewal projects. It was not made by taxing units that did not participate in the decision to undertake

such a project but only reported for their own budgets. If it were necessary to identify the taxing unit that made the political decision constituting the "levy" on the increased property values in the urban renewal area, it would be the governmental body that decides to create the redevelopment agency and to undertake the project with the revenue so obtained \* \* \*. ORS 457.035, 457.045, 457.095.

*Id.* at 602-603.

Based on the foregoing, we believe the courts will take a broad view of "levied," for purposes of section 11g(3)(a), as including all of the means by which the ad valorem property tax revenues are raised. Thus, for purposes of section 11g(3)(a), urban renewal taxes are "levied" if and when the city or county adopts or modifies an urban renewal plan which, respectively, generates or increases tax increment revenues.

#### **D. Increases in Urban Renewal Taxes Requiring Voter Approval**

As noted above, section 11g(3)(a) requires voter approval of all "new" or "additional" ad valorem property tax levies against real property. Given our interpretation of "additional" taxes in Part IV of this opinion, urban renewal taxes that exceed the limitations in section 11g(1) or (2) would be "additional" taxes and would require voter approval under section 11g(3)(a). Similarly, given our interpretation of "new" taxes, urban renewal taxes generated by a new or amended law or by newly authorized urban renewal plan or from an amendment to an urban renewal plan would be "new" taxes, requiring voter approval under section 11g(3)(a).

Because urban renewal bonds are not voter approved under current law, it is not possible that taxes to pay those bonds could satisfy the exception to voter approval found in section 11g(3)(b). Therefore, all "new" urban renewal taxes would require voter approval under section 11g(3)(a), including the part of those taxes that is dedicated to pay bonded indebtedness. Although "additional" ad valorem urban renewal taxes also require voter approval, by definition, those "additional" taxes do not include taxes to pay bonded indebtedness because under section 11g(1) and (2) taxes to pay bonded indebtedness are not subject to the limitations of those subsections. See discussion of taxes to pay urban renewal bonds in Part I B of this opinion and discussion of "additional" taxes in Part IV.

#### **E. Need for Legislation Authorizing Elections**

Before leaving this subject, we note that section 11g(3)(a) only establishes voter approval as a condition on the levy of "new" or "additional" ad valorem property taxes; it does not authorize elections for such purposes. Although most local governments currently have statutory authority to submit their tax levies for voter approval, such authority does not include submitting for voter approval the specific question whether those taxes are authorized notwithstanding the fact that they may be "new" or "additional" for purposes of Article XI, section 11g(3)(a), of the Oregon Constitution. Therefore, it will be necessary to enact laws authorizing and regulating elections for the purpose of certifying to the voters questions concerning the approval of such "new" or "additional" taxes.

#### **VI. Exception to Voter Approval Requirement for Bonded Indebtedness**

Section 11g(3)(a) requires special voter approval of all "new or additional" ad valorem property taxes levied against real property. Yet, section 11g(3)(b) exempts from this requirement "taxes levied to pay bonded indebtedness approved by the voters in an election held prior to the effective date" of the constitutional amendment (December 5, 1996).

You ask whether the exception to the voter approval requirement in section 11g(3)(b) applies only to the issuance of bonds or also to the levy of ad valorem property taxes to pay the bonded indebtedness. We conclude that the exception applies to taxes to repay bonds, provided the bonds were approved by the voters prior to December 5. The exception also applies to both the issuance of, and the levy of taxes to pay, bonds issued to *refund* bonds, but only if those original bonds received voter approval in conformity with the requirements of section 11g(3)(a).

Section 11g(3)(b) provides:

Nothing in this subsection shall affect taxes levied for the repayment of bonded indebtedness *approved by voters* in an election held prior to the effective date of this Act, or the issuance of refunding bonds to pay such bonded indebtedness. This subsection shall not require voter approval for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with this subsection.

(Emphasis added.)

Your question requires us to determine whether the phrase "approved by voters" in the first sentence of section 11g(3)(b) modifies "taxes levied for the repayment of bonded indebtedness" or only the "bonded indebtedness." We conclude that it is the latter for several reasons based on the text of this provision. First, the placement of the phrase "approved by the voters" strongly suggests that it is intended to apply only to the "bonded indebtedness." Unlike other provisions in section 11g with multiple modifying phrases that make it difficult to place the modifier immediately following its object, the first sentence in section 11g(3)(b) could easily have been worded to express a different intent. If the intent had been to condition this exception on voter approval of the taxes, the provision could have been written to state that, "Nothing in this subsection shall affect taxes levied for the repayment of bonded indebtedness *and* approved by the voters in an election held prior to the effective date of this Act." Instead, the phrase "approved by the voters" directly modifies the "bonded indebtedness."

Second, the last clause in the sentence extends its exception for voter approval of taxes to "the issuance of refunding bonds to pay *such* bonded indebtedness." (Emphasis added.) The phrase "such bonded indebtedness" is not a reference to bonded indebtedness generally, but to "bonded indebtedness approved by voters in an election held prior to the effective date of this Act."

Thus, we believe that the text of the first sentence of section 11g(3)(b) is susceptible to only one interpretation. Nevertheless, we also consider this sentence in the context of section 11g as a whole. The apparent purpose for the exception in section 11g(3) is not only to ensure voter approval of "new" or "additional" taxes, but also to avoid violating contract rights related to bonds that may have been created following, and been premised on, voter approval of those bonds.

This point can be readily illustrated by an example. Assume that a government made contractual commitments to issue bonds backed by ad valorem property taxes, having obtained voter approval of those bonds before December 5, 1996. Assume further that the bond revenues were to serve a new purpose and, therefore, the ad valorem taxes might be deemed "new" taxes requiring voter approval under section 11g(3)(a). The contractual commitments relating to the bonds would be breached if the government, following the enactment of section 11g, could not secure voter approval of the taxes to repay the bonds. The wording of section 11g(3)(b) apparently exists to avoid such a result.

There would be no issue of voter approval under section 11g(3)(a) if, prior to December 5, 1996, the effective date of the constitutional amendment, the voters had approved the taxes to pay such bonds. As discussed above, such taxes would not be "new" and, therefore, would not be subject to section 11g(3)(a) in any case. Also, taxes that prior to the effective date were legally authorized for the payment of bonds *issued prior* to the effective date would not be "new" taxes. However, taxes legally authorized on or after December 5, 1996, to repay bonds approved prior to, but *issued after*, that date would be "new." Section 11g(3)(b) exempts from voter approval under section 11g(3)(a) taxes to pay such bonds.

Thus, the effect of the first sentence of section 11g(3)(b) exempts from the provisions of section 11g(3) all taxes levied to pay bonded indebtedness if the *bonds* were voter approved before December 5, 1996. Absent this exemption, such taxes, if "new" or "additional," would be subject to the voter requirements of section 11g(3)(a).

The second sentence of section 11g(3)(b) relates to the issuance of certain bonds and to the taxes to pay those bonds. It provides that subsection (3) "shall not require voter approval for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with this subsection." This exception to voter approval requirements applies to both the issuance of and the levy of taxes to pay bonds issued to refund bonds, but only if those original bonds received voter approval in conformity with the requirements of section 11g(3)(a).

One of two effects of the second sentence of section 11g(3)(b) is to exempt from the *voter approval* requirements of section 11g(3)(a) taxes levied to pay for bonds that are used to "refund," i.e., pay off or retire, other bonds that *were* approved in a manner consistent with section 11g(3)(a). In other words, if the original bonds received the required voter approval, the taxes to pay the replacement bonds do not also require voter approval.

Another effect of the second sentence of section 11g(3)(b) is to declare that the voter approval requirements also do not apply to the *issuance* of bonds that are used to refund bonds that received the required voter approval. This element of section 11g(3)(b) is the most difficult to interpret because section 11g(3)(a) does not require voter approval regarding the issuance of bonds, even if the taxes to pay for those bonds require voter approval because they are "new" or "additional." In other words, there is no apparent reason for the exception because there is no requirement in section 11g(3) that bonds be voter approved. The only explanation that we can offer for the statement that voter approval is not required for bonds used to refund bonds that were voter approved is to remove any doubt that such voter approval is not required. We assume this is simply a direct expression of the more general provisions in section 11g(1), (2) and (3)(b) intended to avoid

impairing existing bond commitments.

The first sentence of section 11g(3)(b) also exempts taxes to repay bonded indebtedness from the provisions of section 11g(3)(c). Section 11g(3)(c) restricts the meaning of "capital constructions and improvements" for which bonds may be authorized under Article XI.<sup>(26)</sup> Since section 11g(3) in no way limits or conditions the issuance of bonds, the exemption found in section 11g(3)(b) relates solely to the taxes to pay bonds, not to bonds themselves, consistent with its plain language.

## VII. "Property" and the Unit of Property

The limitations on ad valorem property taxes imposed by Article XI, sections 11g, apply to taxes levied on "each property." Your next set of questions focuses on the meaning of the term "property" and the unit of property to which the section 11g limitations apply.

### A. Definition of "Property"

You first ask what is meant by the term "property" as used in section 11g, and whether that term includes centrally assessed property. We conclude that the term "property" in section 11g encompasses all forms of property recognized in law, such as real and personal property, tangible and intangible property. Thus, it includes utility property that is "centrally assessed" by the Department of Revenue under ORS 308.515.

#### 1. Property Generally

As noted throughout this opinion, our goal is to determine the probable intent of the voters when they adopted section 11g. The best evidence of that intent is the text and context of the constitutional provision itself, interpreted not upon narrow technical principles, but upon broad general lines, in order that the object intended be accomplished. We approach the interpretation of the term "property" in this same manner.

The fundamental objective of section 11g is that the ad valorem taxes on property be reduced for tax year 1997-98 and limited in growth thereafter. To accomplish this objective, the term "property" is used extensively throughout section 11g. The term "property," however, is not defined in section 11g. Thus, we must consider whether "property," as used in section 11g, has an established or prescribed legal or technical meaning. If not, we would use its plain, ordinary meaning. *See Ecumenical Ministries v. Oregon Lottery Comm.*, 318 Or at 560-62; *Jones v. Hoss*, 132 Or 175, 178, 285 P 205 (1930); 46 Op Atty Gen 388 (1990).

Section 11g neither provides nor implies a special meaning in its use of the term "property." Therefore, we conclude that its plain meaning will control. The most apt dictionary definition of property is:

**2 a** : something that is or may be owned or possessed : wealth, goods; *specif* : a piece of real estate <the house surrounded by the --G. G. Weigend> **b** : the exclusive right to possess, enjoy, and dispose of a thing : a valuable right or interest primarily a source or element of wealth : ownership <all individual is a form of monopoly --Edward Jenks> **c** : something to which a person has a legal title : an estate in tangible assets (as lands, goods, money) or intangible rights (as copyrights, patents) in which or to which a person has a right protected by law

Webster's International at 1818. The general meaning of "property" as "something \* \* \* owned" includes all forms of things that legally may be owned: tangible assets, such as lands, goods or money, and intangible assets, such as intellectual property.

Significantly, the term "property" in section 11g is not modified by other terms (as, for example, "real" property, "personal" property or "intangible" property) except in two places. Only in subsections 11g(3)(a) and section 11g(4)(a) is the expression "real property" used.<sup>(27)</sup> These two exceptions imply that when the term "property" is used in section 11g, unaccompanied by such words of limitation, it is intended to include all forms of property.

Notwithstanding the foregoing preliminary conclusion, we also consider the "context" of section 11g. We note, initially, that the context of section 11g necessarily includes the ad valorem property tax system in effect at the time the voters approved it. Moreover, the tax limitation for tax year 1997-98 prescribed by section 11g(1) itself is based specifically on taxes in tax years 1994-95 or 1995-96. This suggests that the voters understood that the limitations on ad valorem taxes on "property" in section 11g would apply at least to all forms of property that were subject to tax at the time section 11g took effect. At the time section 11g took effect, the ad valorem property tax was assessed on real and personal property, but

only certain kinds of intangible property of designated utilities. ORS 307.030, 308.505.

We note also that section 11g(3)(c) modifies the definition of capital construction and improvements as used in Article XI, thereby linking section 11g to other sections in Article XI. Like section 11g, section 11b of Article XI (Measure 5 (1990)) imposes limitations on property taxes. Although the term "property" is not defined in section 11b, the legislature provided the following definition for the purpose of implementing Article XI, section 11b:

real or tangible personal property, and intangible property that is part of a unit of real or tangible personal property to the extent that such intangible property is subject to a tax on property.

ORS 310.140(1).

It is reasonable to assume that property taxpayers would have been at least generally aware of these property concepts when they adopted section 11g. Thus, it might not be unreasonable to conclude that the definition of property in ORS 310.140(1) prescribes the minimum scope of the meaning of "property" in Article XI, section 11g. In the absence of any language in section 11g suggesting another definition, one could conclude that the voters intended the meaning of "property" under section 11g to be the same as the existing statutory definition.

Notwithstanding the foregoing, we believe it is unlikely that the courts would conclude that, for purposes of section 11g, the voters intended "property" to have the special definition found in ORS 310.140(1). Section 11g does not contain any restrictive language to suggest that only certain property is subject to its limitations, and the overall purpose of section 11g belies any such interpretation. Section 11g(1) and (2) limit not only existing, but also future ad valorem property taxes. Moreover, section 11g(3) prohibits new or additional ad valorem property taxes without voter approval, suggesting that other kinds of ad valorem property taxes would be subject to section 11g requirements. Accordingly, we conclude that the term "property" in section 11g is intended to have its plain, natural and ordinary meaning which would include all types of property, such as real and personal property, tangible and intangible property.

## **2. Centrally Assessed Utility Property**

Having concluded that "property" includes all types of property, we necessarily also conclude that utility property that is centrally assessed by the Department of Revenue under ORS 308.515 is "property" for purposes of section 11g.<sup>(28)</sup> In fact, the statutory definition of property for purposes of the central assessment statutes, found in ORS 308.510, appears to be equally broad.<sup>(29)</sup> The conclusion that "property" includes centrally assessed property is further supported by the facts that (1) utility property was taxed under the ad valorem tax system when section 11g became law, and (2) the definition of property in ORS 310.140 includes intangible property, for which only utilities are assessed.

A California case interpreting Article XIII A, section 2, subdivision (a), of the California Constitution (part of the 1978 initiative known as "Proposition 13"), holds that its valuation rollback provision does not apply to unit taxation of utility property. *ITT World Communications, Inc. v. City and County of San Francisco et al*, 693 P2d 811 (Cal 1985). This case does not provide guidance here, because the California constitutional provision applied only to real property. In contrast, Article XI, section 11g, of the Oregon Constitution applies not only to real property, but also to personal or intangible property, and therefore also applies to utility property. In addition, the California provision applied only to locally assessed property. Because utility property in California was state-assessed, it failed to meet this requirement. *Id.* at 817. In contrast, section 11g applies to all ad valorem property taxes, regardless of the unit of government assessing the tax.

Therefore, we conclude that centrally assessed utility property is "property" for purposes of section 11g.

## **B. The Unit of Property**

You also ask what unit of property is to be used for purposes of applying the limitations in section 11g. We first address this question and then consider the three examples you pose.

As with the general concept of property, section 11g does not define or otherwise prescribe the unit of property for purposes of its provisions. In fact, "unit of property" is not mentioned in section 11g. Nevertheless, as discussed below, it is necessary to consider this issue because in the administration of the ad valorem property tax system the unit of property can be either groupings of items of property or each item of property individually or combinations of each.

Because there is no term or expression relating to the unit of property, the proper focus is on the general intent of section 11g. There is nothing in section 11g to suggest that it is intended to change the administration of ad valorem property taxes

apart from certain limitations on the imposition of taxes discussed above. In fact, as noted above, section 11g presupposes the existing system of ad valorem property taxation and, in some instances, specifically refers to taxes imposed under that system in previous years.

In particular, the remainder of Article XI, including section 11b, and related statutes in effect at the time section 11g was approved by the voters, are part of the context of section 11g. Although the unit of property is not defined in section 11b itself, it has been defined by the legislature for purposes of section 11b in ORS 310.160.<sup>(30)</sup> The objective of ORS 310.160 is to combine property which is used for a single integrative or operating purpose into the same unit. For example, all contiguous property within a single code area under common ownership that is used and appraised for a single integrative purpose is treated as the unit of property regardless of the number of tax accounts. ORS 310.160(1). All items of personal property in a single tax account are treated as a single unit if they are not part of an operating unit consisting of both real and personal property. ORS 310.160(4). Land and improvements under different ownership that are combined into a single operating unit are treated together as a single unit. ORS 310.160(5). Therefore, the determining factor in defining the unit of property for purposes of section 11b is the extent to which the property is combined into a single integrative unit regardless of divisions by tax account.

It is arguable, although unlikely, that the specific concept of "unit of property" in ORS 310.160 at the time section 11g became law governs the implementation of section 11g. We say "unlikely" because there is nothing in section 11g that references ORS 310.160 or otherwise suggests the particular treatment of "unit of property" that is found in the statute. Thus, there is no reason to suppose that when the people approved section 11g they had in mind ORS 310.160, or any specific concept of "unit of property" or even a single concept of "unit of property." Nevertheless, we cannot say that the treatment of the "unit of property" in ORS 310.160 is inconsistent with the provisions of section 11g. In fact, because sections 11b and 11g both limit property taxes, it is reasonable to assume that the legislation implementing section 11b, such as ORS 310.160, would not be inconsistent with the general intent of section 11g.<sup>(31)</sup>

Thus, we reach the following conclusions. First, because section 11g does not prescribe what the unit of property is to be for purposes of applying its provisions, the legislature may enact implementing legislation to address this issue. Second, the legislature may prescribe any definition or treatment of the unit of property, including different definitions for different purposes, as long as those definitions do not conflict with the intent of section 11g in limiting property taxes, with other provisions of the Oregon Constitution or with federal law.

Because the "unit of property" definition found in ORS 310.160 does not appear to conflict with section 11g, we address the examples of property posed by your question using this existing definition for illustrative purposes only.

## **1. Industrial Plant**

You ask specifically whether an entire tax account consisting of either real property (land and improvements) or of personal property is a single unit of "property" if the real property or personal property is part of an industrial plant. As discussed above, the answer would depend upon what concept the legislature adopts as the unit of property for purposes of implementing section 11g. Under ORS 310.160, an entire industrial plant would be viewed as a single integrative unit. The defining feature is not whether the real or personal property is in a separate tax account but whether the property is part of a single operating unit.

Assuming a similar standard is adopted by the legislature for purposes of section 11g, a tax account consisting either of real property (land and improvements) or of personal property would be a single unit of "property," unless the real or personal property is an integrated part of a larger property within a tax code area, such as an industrial plant, in which case it would be part of that larger unit of property, and not a separate unit of property. The legislature may, of course, adopt a different approach in implementing section 11g.

## **2. Identifiable Personal Property Within a Personal Property Account**

You next ask whether each identifiable piece of personal property within a personal property account is a separate unit of "property" for purposes of section 11g. The answer, again, will depend upon implementing legislation. Assuming the legislature follows the approach found in ORS 310.160, the unit of property will consist of all contiguous property (including both real and personal property) within a single code area in the county under common ownership that is used and appraised for a single integrated purpose. *See* ORS 310.160(1). Conversely, if the personal property "is not part of an operating unit consisting of both real and personal property, the unit of property shall consist of all items of personal property identified in a single property tax account." *See* ORS 310.160(4).

### **3. Centrally Assessed Utility Property**

You also ask whether an entire centrally assessed utility property under ORS 308.515 is a single unit of "property" for purposes of the section 11g limitation on ad valorem property taxes. Once again, if the legislature adopts legislation implementing section 11g consistent with ORS 310.160, all of the property of a utility taxed within a tax code area, both real and personal property, tangible and intangible, would be a single unit of property.

We are aware, however, that centrally assessed utilities typically have property in many tax code areas and in fact several states. It would be entirely reasonable and consistent with the limitations of section 11g for the legislature to adopt a special definition of "unit of property" for utilities in order to effectively administer the tax laws consistent with the special features of utility property.

### **C. Consistency with Appraisal Theory and Practice**

Finally, you ask if the unit of property for purposes of the section 11g limitations on ad valorem property taxes may be different from the unit of property used for appraisal purposes. The answer is a conditional yes.

Section 11g is a limitation on the amount of property taxes, not a limitation on the manner in which property is appraised. Section 11g achieves this objective by limiting the amount of the tax in tax year 1997-98, and then by limiting the annual growth of those taxes to three percent per year in subsequent years subject, in certain circumstances, to additional limitations.

The only reference in section 11g to appraisal is in subsection (6), which limits the assessed valuation of each property to its real market value. This provision does not prescribe a particular unit of property for appraisal purposes. Thus, the only requirement imposed by section 11g is that, whatever the unit of property, the appraisal of that property may not exceed its real market value.

### **VIII. Improvements**

Your next set of questions arises from section 11g(4)(a), which provides that taxes on a property may be increased by reason of "improvements" to that property made during or after the 1994-95 tax year but may not exceed the special limitations set out in section 11g(4)(a).

#### **A. Effect of Tax Limitation on Property That Is Improved**

You first ask for a general explanation of how the section 11g limitations would apply to improved property. The operative language of the exception in section 11g(4)(a) provides:

In the event a property is improved during or after the 1994-95 tax year, the ad valorem property taxes on that property may be increased, by reason of such improvements, in excess of the three percent (3%) limitation of subsection (2) of this section, except that the tax shall not exceed the lesser of (i) the average ad valorem property taxes paid on similar properties similarly valued and located in the same taxing code area, or (ii) the ad valorem property taxes on the property without regard to the new or additional improvements, plus the ad valorem property taxes on the improvements at the same dollar to value ratio as paid on the property without the improvements.

Once the new improvements are added to a property and the ad valorem property tax attributable to the new or additional improvements is determined, the ad valorem property tax attributable to the improvements may be increased in subsequent tax years in the manner allowed under subsection (2) of this section.

As discussed in Part II B of this opinion, if the subject property is improved during the 1994-95, 1995-96 or 1996-97 tax year, the limitation in section 11g(1) does not apply for purposes of calculating the permitted tax on the property for the 1997-98 tax year. If the property is improved during or after the 1997-98 tax year, the three percent growth limitation under section 11g(2) does not apply for purposes of calculating the permitted tax on the property for the tax year following the year in which the improvements were made. Instead, the applicable limitation is found in subsection (4)(a)(i) or (4)(a)(ii). We discuss these two special limitations below and then provide an example of how our interpretation of subsection (4)(a) would apply to improved property.

#### **1. Limitation in Subsection (4)(a)(i)**

The limitation contained in subsection (4)(a)(i) requires a determination of "the average ad valorem property taxes paid on

similar properties similarly valued and located in the same taxing code area." Although this language does not expressly designate any specific tax year for which the "average ad valorem property taxes" on similar property must be determined, the most reasonable interpretation is that the taxes on the comparison properties are to be determined as of the same tax year for which the taxes on the property that is improved are being determined. For example, assume that Property X was improved during the 1997-98 tax year. The limitation in subsection (4)(a) would apply for purposes of calculating the taxes on Property X for the 1998-99 tax year. Therefore, the limitation in subsection (4)(a)(i) would be ascertained by determining the average ad valorem property taxes to be assessed for the 1998-99 tax year on similar properties that are similarly valued.

We also must consider whether the comparison required by section 11g(4)(a)(i) is between taxes on the entire property with the improvements and the average tax on similar properties similarly valued, or only between the tax on the improvement and the average tax on similar improvements. The text of section 11g(4)(a) requires a comparison between the tax on the property that is improved and the average ad valorem tax paid on "similar properties." Therefore, we conclude that the comparison should be between taxes on the entire property with the improvements and the average tax on similar properties with similar improvements similarly valued in the same tax code area.

## **2. Limitation in Subsection (4)(a)(ii)**

The limitation contained in subsection (4)(a)(ii) requires a determination of "the ad valorem property taxes on the property without regard to the new or additional improvements." Again, this language does not designate any specific tax year for determining "the ad valorem property taxes on the property." The most reasonable interpretation is that, for this purpose, the ad valorem property taxes are those that would have been assessed on the unimproved property for the current year, taking into account the property tax limitations under section 11g and under Article XI, section 11b, of the Oregon Constitution (Measure 5 (1990)).

Subsection (4)(a)(ii) also requires that property taxes on the improvements be separately calculated "at the same dollar to value ratio as paid on the property without the improvements." We interpret this language as requiring, first, a calculation of the "dollar to value ratio" by dividing the property taxes that could have been assessed for the current tax year on the unimproved property by the real market value of that property as determined for the current tax year. Second, the taxes on the improvements would be determined by multiplying the resulting "dollar to value ratio" by the value of the improvements also as determined for the current tax year.<sup>(32)</sup>

## **3. Example of Subsection (4)(a) Limitation Applied to Improved Property**

The following example illustrates our interpretation of the limitation in subsection (4)(a). Assume the following facts:

1. The ad valorem property taxes on Property X for the 1994-95 and 1995-96 tax years were \$1,100 and 1,200, respectively.<sup>(33)</sup> For the 1997-98 tax year, the tax on Property X, as limited by section 11g(1), was \$1,080 (90% of the 1995-96 tax).
2. During the 1997-98 tax year, Property X is "improved" within the meaning of section 11g(4)(a).
3. For purposes of the 1998-99 tax year, the real market value of Property X is \$175,000, of which \$65,000 represents the value of the improvements.
4. The average ad valorem property taxes assessed for the 1998-99 tax year on properties within the same taxing code area that are similar to (and similarly valued as) Property X, as improved, are \$1,800.<sup>(34)</sup>

**Application of Subsection (4)(a)(i):** The subsection (4)(a)(i) limitation for Property X's taxes for the 1998-99 tax year would be \$1,800 (the average ad valorem property taxes paid by similar properties similarly valued within the same taxing code area).

**Application of Subsection (4)(a)(ii):** The subsection (4)(a)(ii) limitation for Property X's taxes for the 1998-99 tax year would be calculated as follows:

First, determine the 1998-99 property taxes that could have been assessed on Property X had it not been improved. This tax will be subject to the applicable property tax limitation for that year. The limitation under section 11g is calculated by increasing the 1997-98 taxes (\$1,080) by three percent, resulting in total permitted taxes for 1998-99 of \$1,112.40. The limitation under Measure 5 is \$15 for each \$1,000 of real market value (\$175,000 x .015), resulting in a limitation of \$2,625. Because the section 11g limitation is lower, it is the applicable limitation in this example.

Second, calculate the dollar-to-value ratio of the 1998-99 property taxes by dividing \$1,112.40 by the value of Property X, without regard to the value of the improvements (\$110,000). The resulting dollar-to-value ratio is .01011.

Third, determine the permitted 1998-99 taxes on the improvements by multiplying the dollar-to-value ratio (.01011) by the value of the improvements (\$65,000). This results in permitted taxes on the improvements of \$657.15.

Fourth, add the permitted taxes on the unimproved Property X (\$1,112.40) to the permitted taxes on the improvements (\$657.15). The resulting figure, \$1,769.55, is the limitation under subsection (4)(a)(ii).

**Subsection (4)(a) Limitation:** Because the limitation calculated under subsection (4)(a)(ii) (\$1,769.55) is less than that calculated under subsection (4)(a)(i) (\$1,800), the applicable limitation is that calculated under subsection (4)(a)(ii). Accordingly, the maximum property tax that could be assessed on Property X for the 1998-99 tax year would be \$1,769.55.<sup>(35)</sup>

## **B. Effect of Concurrent Additions and Retirements or Depreciation**

You next ask about the effect of additions and retirements or depreciation to the same unit of property in the same year in determining whether property has been "improved" for purposes of the section 11g(4)(a) exception. We conclude that a property could be "improved" within the meaning of section 11g(4)(a) even if the property had a concurrent offsetting reduction in value due to depreciation or retirements.

In determining whether there is an improvement, the fundamental question is whether additions of property are netted against retirements of property and depreciation. Section 11g(4)(a) discusses property being improved by "new construction, reconstruction or major addition, remodeling, renovation or rehabilitation of real property." This provision makes no mention of retirements, depreciation or netting additions with retirements to determine if an improvement exists. Therefore, we conclude that the determination of whether a unit of property has been "improved" is made without regard to any concurrent reductions in value due to depreciation or retirements of machinery or equipment, i.e., improvements are not netted against retirements and depreciation.<sup>(36)</sup>

## **C. Value of Property Without the Improvements**

You also ask how the value of the unimproved property is to be determined for purposes of calculating the dollar-to-value ratio referred to in section 11g(4)(a)(ii) when the improved property includes machinery or equipment. As discussed above, the section 11g(4)(a)(ii) limitation requires a determination of the property's value without regard to the improvements. We concluded that, for this purpose, the value of the property without the improvements is to be determined as of the current tax year.

We further conclude that the value must be the property's "real market value" as defined in ORS 308.205 and the underlying administrative rules. Under the law in effect when section 11g was adopted by the voters, ad valorem property taxes must be based on the subject property's "real market value." ORS 308.232; *see also* Or Const Art XI, § 11b (imposing tax limitations based on property's "real market value"). Absent any indication of contrary intent, we assume that the voters were aware of the taxation system in place at the time they adopted the Measure and that they intended it to operate within that system. *See* 46 Op Atty Gen 388, 395 (1990).

There is no indication that section 11g was intended to supersede the "real market value" requirements under existing law. To the contrary, section 11g(6) specifically states that "[i]n no case shall the assessed valuation of any property exceed its real market value." We therefore conclude that, for purposes of calculating the limitation in section 11g(4)(a)(ii), the value of the property without the improvements cannot exceed its real market value. That value must take into account reductions in value due to retirements or depreciation for the year in question as well as any appreciation in value. *See, e.g.,* OAR 150-308.205-(D).

The following two examples will illustrate this conclusion. The first example shows the calculation of the section 11g(4)(a)(ii) limitation for a unit of property that has an improvement and retirement of equipment in the same tax year. The second example shows the calculation of the section 11g(4)(a)(ii) limitation for a unit of property that has an improvement and depreciation in the same year.

**Example A (concurrent improvement and retirement):** Assume the following facts:

1. The ad valorem property taxes on Property A for the 1994-95 and 1995-96 tax years were \$1,100 and 1,200, respectively (assume for this purpose that no bond taxes are assessed on Property A for any of the years in question).
2. During the 1996-97 tax year, Property A is "improved" within the meaning of section 11g(4)(a). During the same year, a piece of equipment on Property A is retired.
3. For purposes of the 1997-98 tax year, the total real market value of Property A, taking into account both the value of the improvements and the reduction in value due to the retirement of equipment during 1996-97, is \$175,000. The value of the improvements was \$65,000 without regard to the retirement.
4. There are no properties within the same taxing code area that are similar to (and similarly valued as) Property A as improved.

**Application of Subsection (4)(a)(ii):** The subsection (4)(a)(ii) limitation for Property A's taxes for the 1997-98 tax year would be calculated as follows:

First, determine the 1997-98 property taxes that could have been assessed on Property A had it not been improved. The limitation under section 11g(1) would be \$1,080 (90% of the 1995-96 tax). The limitation under section 11b (Measure 5 (1990)) would be \$2,625 ( $\$175,000 \times .015$ ). Thus, the maximum amount that could have been assessed on the property without the improvements for 1997-98 would be \$1,080. (For purposes of this example, we assume that the taxes on the property without the improvements are capped at the property tax limitation.)

Second, calculate the dollar-to-value ratio of the 1997-98 property taxes by dividing \$1,080 by the real market value of Property A without regard to the value of the improvements (\$110,000). The resulting dollar-to-value ratio is .0098.

Third, determine the permitted 1997-98 taxes on the improvements by multiplying the dollar-to-value ratio (.0098) by the value of the improvements (\$65,000). This results in permitted taxes on the improvements of \$637.

Fourth, add the permitted taxes on the unimproved Property A (\$1,080) to the permitted taxes on the improvements (\$637). The resulting figure, \$1,717, is the limitation under subsection (4)(a)(ii).

**Example B (concurrent improvement and depreciation):** Assume the following facts:

1. Property B, which includes depreciable personal property, had a real market value of \$100,000 in 1997-98 (without regard to any improvements made to the property during that tax year).
2. The ad valorem property taxes on Property B for the 1997-98 tax year were \$1,400 (assume for this purpose that no bond taxes are assessed on Property B for any of the years in question).
3. During the 1997-98 tax year, Property B is "improved" within the meaning of section 11g(4)(a).
4. For purposes of the 1998-99 tax year, the total real market value of Property B, taking into account both depreciation and the value of the improvement made during 1997-98, is \$130,000. The real market value of the improvement is \$50,000 without regard to the depreciation of the property without the improvements.
5. There are no properties within the same taxing code area that are similar to (and similarly valued as) Property B, as improved.

**Application of Subsection (4)(a)(ii):** The subsection (4)(a)(ii) limitation for Property B's taxes for the 1998-99 tax year would be calculated as follows:

First, determine the 1998-99 property taxes that could have been assessed on Property B had it not been improved. The limitation under section 11g(2) would be \$1,442 (the amount of the 1997-98 tax, plus 3%). The limitation under section 11b (Measure 5 (1990)) would be \$1,200 ( $\$80,000 \times .015$ ). Thus, the maximum amount that could have been assessed on the unimproved property for 1998-99 would be \$1,200.

Second, calculate the dollar-to-value ratio of the 1998-99 property taxes by dividing \$1,200 by the real market value of Property B without regard to the value of the improvements (\$80,000). The resulting dollar-to-value ratio is .015.

Third, determine the permitted 1998-99 taxes on the improvements by multiplying the dollar-to-value ratio (.015) by the value of the improvements (\$50,000). This results in permitted taxes on the improvements of \$750.

Fourth, add the permitted taxes on the unimproved Property B (\$1,200) to the permitted taxes on the improvements (\$750). The resulting figure, \$1,950, is the limitation under subsection (4)(a)(ii).

## **IX. New Personal Property**

Your next question focuses on new personal property that is added to (a) an existing unit of business property consisting of both real and personal property, (b) an existing tax account consisting entirely of items of personal property, and (c) an existing individual item of personal property. You ask how the section 11g limitations should be applied when determining the taxes for such property.

The answer to your question depends on whether personal property can be an "improvement" for purposes of section 11g(4)(a). If personal property is an improvement for purposes of section 11g(4)(a), the taxes on the "improved" property would be subject to the limitation in that section, as described in Part VIII of this opinion. If personal property is not an improvement, taxes on the "combined" property (the existing property plus the newly added personal property) would be subject to the three percent growth limitation in section 11g(2).

In our earlier opinion regarding section 11g, we concluded that personal property could not be considered an improvement. Op Atty Gen No. 8243, at 26-27. We now reverse that position. At the time our earlier opinion was issued, we had not undertaken a detailed analysis of either the definition of property in section 11g or the unit of property for purposes of applying the limitations of section 11g since those questions had not been asked. The present inquiry into these two questions prompted a reexamination of the question whether personal property could be considered improvements. We now conclude that personal property can be an improvement and can be improved for purposes of section 11g(4)(a).

Section 11g(4)(a) applies "[i]n the event a property is improved during or after the 1994-95 tax year," and permits taxes on that property to be increased "by reason of such improvements" within the special limitations set out in section 11g(4)(a). As we said in Op Atty Gen No. 8243, we believe that the terms "property" and "improved" would be given their plain, ordinary meaning, since they are not defined in section 11g and the context in which they are used in that section does not imply a technical meaning. In Part VII A of this opinion, we concluded that, for purposes of section 11g, the term "property" includes both real and personal property. As used in the phrase "in the event a property is improved" in section 11g(4)(a), the term "property" is not modified by any words of limitation that would restrict its meaning to only real property being improved. This lack of restriction suggests that the voters intended section 11g(4)(a) to apply to improvement of personal property as well as real property.

The only instance in section 11g(4)(a) where the term "property" is qualified is in the definition of "improvement." Section 11g(4)(a) defines "improvement" as

new construction, reconstruction or major additions, remodeling, renovation or rehabilitation *of real property* including siting, installation or rehabilitation of manufactured structures, but shall not include minor construction or general, on-going maintenance and repair.

In Op Atty Gen No. 8243, we recognized that under the last antecedent rule, the qualifying phrase "of real property" in this definition would be interpreted as modifying only the last word immediately preceding it, i.e., "rehabilitation." Nevertheless, we stated that because none of the preceding words suggested forms of personal property, a court would likely conclude that the "improvements" to which section 11g(4)(a) applied were improvements to real property.

We now reverse that portion of our earlier opinion and conclude that section 11g(4)(a) applies to improvement of personal property as well as real property. While some of the terms defining improvements do suggest real property, such as "new construction" or

"reconstruction," the applicability of other terms, such as "major additions, remodeling or renovation" are not in fact confined to real property. For example, when airlines acquire new planes for their fleet, which are classified as personal property, they report the new planes as "additions" to their unit. When the interior of a plane is changed, it is typical to describe the change as a "remodeling" or a "renovation." Hardware upgrades to computer systems can be "major additions" to the computer system. Consequently, we cannot discern solely from the words used that the phrase "of real property" was intended to modify each of those words rather than the last antecedent.

Accordingly, we look for evidence of the voters' intent in the context of section 11g as a whole. As discussed throughout this opinion, section 11g is intended to reduce and limit ad valorem property taxes. Nevertheless, section 11g(4)(a) expressly permits taxes on a property to increase in excess of the three percent growth limitation in section 11g(2) by reason of improvements. We find no apparent rationale why the voters would not have intended to permit taxes on property to be increased in excess of the three percent growth limitation solely because the property to which there was a "major addition," "remodeling" or "renovation" was personal, rather than real, property. New personal property can enhance and improve a unit of property in the same fashion as "new construction" or "reconstruction" can do for real property as contemplated in section 11g(4)(a), and presumably the taxes related to that increase in value should not be capped at the annual three percent growth limitation, but increased in the same fashion (and subject to the same special limitations) as improvements to real property. Although intending to limit property tax increases due to government action or inflation in values, there is no indication in the text or context of section 11g that the voters did not want to tax the increased value of personal property that is attributed to major additions, remodeling or renovation.

Nevertheless, because the definition of improvements is susceptible to more than one plausible reading, we look to extrinsic materials. The Voters' Pamphlet materials discuss the provisions of section 11g(4)(a) only in general terms, stating in the Explanatory Statement:

Other exceptions permit property taxes to exceed the three percent growth limitation when certain changes occur *to property* or to the assessment of property. These changes include new construction or improvements made *to property* \* \* \*

(Emphasis added.) Again, the lack of any qualification to the term "property" that would restrict its meaning to real property suggests that the voters did not intend such a restriction.

Because we do not find even the slightest intent to limit the section 11g(4)(a) limitation only to real property, we conclude that the phrase "of real property" in the definition of improvements is intended to modify only the last antecedent, i.e., rehabilitation of real property. Therefore, we conclude that personal property can be an improvement to real or personal property if it is a "major addition," "remodeling" or "renovation."

We turn now to the three examples contained in your question. You ask about the addition of new personal property to (a) business property consisting of both real and personal property, (b) a tax account consisting entirely of items of personal property, such as

an industrial property tax account, and (c) an individual item of personal property. Based on the foregoing analysis, adding personal property to the existing property in each of those examples would be treated as an improvement, provided the addition was a "major" addition to that unit of property,<sup>(37)</sup> or the existing unit of property was "remodeled" or "renovated" by the new personal property.<sup>(38)</sup> As an improvement, the new personal property would be subject to the special limitation in section 11g(4)(a) instead of the three percent growth limitation in section 11g(2).

## **X. Revenue Reductions**

Your final question asks how to measure "revenue reductions resulting from" section 11g. We conclude that such revenue reductions are the difference between the amount of property taxes that could be imposed on property absent the limitations of section 11g and the amount of property taxes that may be imposed on property within the limitations of section 11g.

Section 11g(1) limits the amount of property tax that may be imposed for the 1997-98 tax year, exclusive of taxes levied to pay bonded indebtedness or interest thereon, to the lesser of 90 percent of the 1995-96 taxes on the property or the amount of the 1994-95 taxes on the property. The growth of property taxes is limited by section 11g(2) to no more than three percent per year thereafter. Section 11g(7) provides that if these limits result in "revenue reductions," the reductions are to be allocated to protect, to some extent, public safety and public education and to minimize the loss of local control of cities and counties. *See* Op Atty Gen No. 8243, at 9.

Section 11g imposes a limitation on the amount of property taxes that can be imposed on each property. It is clear from its text and context that section 11g was intended to reduce property taxes from their current levels. Section 11g(7) describes the "revenue reductions" that must be allocated as those "resulting from" the constitutional amendment itself. According to Webster's International, at 1937, the term "result" means "to proceed, spring, or arise as a consequence, effect or conclusion." The revenue reductions that are a consequence of section 11g are those that are caused by its operation after all preexisting limits on property taxes have been applied.

Under the law in effect at the time section 11g was approved by the people, the amount of property taxes to be collected was determined initially by reference to the budgets of local government entities. Each local government unit is required by law to determine how much property tax revenue is needed to balance its annual budget. ORS 294.435, 310.010. Each unit of local government certifies a tax levy to the county assessor. ORS 310.060. The assessor then calculates the rate of tax needed to raise the amount of the levy for all local government units within the county. ORS 310.090. The assessor must assure that the taxes imposed on any particular property comply with all statutory and constitutional limits, including the limits of Article XI, section 11 (tax base limitation) and section 11b (Ballot Measure 5 (1990)), and any statutory limitation on the amount of property tax that can be levied. ORS 310.070, 310.150. Therefore, it is reasonable to conclude that the reductions in taxes "resulting from" section 11g must be determined by comparison of the

total amount of taxes that may be imposed under section 11g with the amount of property taxes that could have been collected under the statutory and constitutional limitations that existed immediately before the approval of section 11g.

HARDY MYERS  
Attorney General

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1. Article XI, section 11g, of the Oregon Constitution provides:

Notwithstanding Section 32, Article I, Section 1, Article IX, Section 11, Article 11, or any other provision of this Constitution:

(1) Except as provided in subsections (3), (4), and (5) of this section, the ad valorem property tax on each property for the tax year 1997-98, excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon, shall not exceed the lesser of the following: (i) the ad valorem property tax on the same property for the tax year ending June 30, 1996, reduced by ten percent (10%), or (ii) the ad valorem property tax on the same property for the tax year ending June 30, 1995.

(2)(a) For tax years following tax year 1997-98, except as provided in subsections (3), (4), and (5) of this section, the ad valorem property tax on each property shall not exceed the tax for the previous year, plus three percent (3%).

(b) The portion of the property tax that is levied on each property for the payment of bonded indebtedness or interest thereon is exempted from the three percent (3%) annual increase limitation set forth in (a) of this subsection.

(3)(a) On and after the effective date of this section, there shall be no new or additional ad valorem property tax levies against real property, unless the question of the levy has been approved by not less than fifty percent (50%) of voters voting in a general election in an even numbered year, or other election in which not less than fifty percent (50%) of the registered voters eligible to vote on the question cast a ballot.

(b) Nothing in this subsection shall affect taxes levied for the repayment of bonded indebtedness approved by voters in an election held prior to the effective date of this Act, or the issuance of refunding bonds to pay such bonded indebtedness. This subsection shall not require voter approval for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with this subsection.

(c) For purposes of this Article, capital construction and improvements for which bonded indebtedness may be authorized shall not include maintenance and repairs, the need for which could reasonably be anticipated, supplies and equipment which are not intrinsically part of

the structure, but shall include public safety and law enforcement vehicles with a projected useful life of not less than five years or the period established for the repayment of the bonds, whichever is greater.

(c) The ballot title of a bond measure which is subject to this section shall include a reasonably detailed, simple and understandable description as to the use of the proceeds and the approximate percentage each use is of the whole.

(d) If an election is conducted by mail and includes a question, the approval of which would result in a new or additional ad valorem property tax levy against real property, the front of the outer envelope mailed to electors shall be clearly and boldly printed in red with the following statement: CONTAINS VOTE ON PROPOSED TAX INCREASE.

(e) When an election includes a question regarding a new or additional ad valorem property tax levy, elections officers shall provide a timely notice of deadlines for the filing of voters pamphlet statements to each person who has requested in writing that they receive such notices.

(4)(a) In the event a property is improved during or after the 1994-1995 tax year, the ad valorem property taxes on that property may be increased, by reason of such improvements, in excess of the three percent (3%) limitation of subsection (2) of this section, except that the tax shall not exceed the lesser of (i) the average ad valorem property taxes paid on similar properties similarly valued and located in the same taxing code area, or (ii) the ad valorem property taxes on the property without regard to the new or additional improvements, plus the ad valorem property taxes on the improvements at the same dollar to value ratio as paid on the property without the improvements.

Once the new improvements are added to a property and the ad valorem property tax attributable to the new or additional improvements is determined, the ad valorem property tax attributable to the improvements may be increased in subsequent tax years in the manner allowed under subsection (2) of this section.

For the purposes of this subsection, "improvements" mean new construction, reconstruction or major additions, remodeling, renovation or rehabilitation of real property including siting, installation or rehabilitation of manufactured structures, but shall not include minor construction or general, on-going maintenance and repair.

(b) In the event a property is rezoned, resulting in a higher assessed valuation, ad valorem property taxes on that property may be increased in excess of the limitation set forth in subsection (2) of this section, except the tax shall not exceed the average ad valorem property taxes paid on similar properties similarly valued and located in the same taxing code area, and the ad valorem property tax increase exceeding three percent (3%) per annum shall not be in effect until the first tax year after the property is actually used in a manner or for a purpose consistent with the new zoning unless the zone change was requested in writing by the property owner(s).

If prior to the effective date of this Act the ad valorem property taxes on a property have been increased due to a zone change not requested by the owner of the property, and the property has not been used in a manner or for a purpose consistent with the new zoning, and there has not been a transfer of ownership, the property shall be reassessed for

the tax year 1997-98 consistent with the zoning effective immediately prior to the unrequested zone change or the actual use of the property, whichever results in the greater tax. Thereafter, the tax may be increased only within the limitations of this Act until there is a transfer of ownership or the property is used in a manner consistent with the new zoning. transfer of ownership by inheritance shall not be considered transfer of ownership for purposes of this subsection.

(c) If a property is subdivided into two or more separate parcels, the tax on each newly created parcel shall not exceed the average tax paid on property similarly valued to the newly created parcel and located in the same taxing code area.

(d) If there is a lot line adjustment between existing, adjacent properties that does not create a new lot of record, the tax on each newly created parcel shall be adjusted according to any increase or decrease in value, but the combined ad valorem property tax on the properties shall not be increased more than is permitted under subsection (2) of this section for the tax year in which the lot line adjustment is taken into account.

(e) If a property is placed in a different taxing code area, the ad valorem property tax on that property may be increased in excess of the limitation set forth in subsection (2) of this section if:

(A) The taxing district annexation that resulted in the property being placed in the different taxing code area was approved by a majority of voters casting a ballot in a general election in an even numbered year or other election in which not less than fifty percent (50%) of the registered voters eligible to vote in the election cast a ballot, and

(B) the increased tax on the property does not exceed the average ad valorem property tax paid on similar property similarly valued in the same taxing code area.

(5) For the first year following disqualification for exemption or special assessment, or in the event a property is added to the assessment and tax rolls as omitted property, ad valorem property taxes on that property may be increased in excess of the three percent (3%) increase limitation set forth in subsection (2) of this section, except the tax shall not exceed the average ad valorem property taxes paid on similar property similarly valued in the same taxing code area.

(6) In no case shall the assessed valuation of any property exceed its real market value.

(7) If it is necessary to allocate among political subdivisions of the state, or departments or agencies within those political subdivisions, any revenue reductions resulting from this Act, redistribution of revenues shall be done in a manner so as to (i) prioritize public safety and public education, and (ii) minimize any loss of local control of cities and counties to state government.

(8)(a) No government product or service that on or after June 30, 1995 was wholly or partially paid for by ad valorem property taxes, shall be shifted, transferred, or otherwise converted so as to be wholly or partially paid for by a fee, assessment, or other charge except state income taxes, without prior voter approval. If such a shift, transference or conversion of a property tax to a fee, assessment, or

other charge except state income taxes, occurred without voter approval after June 30, 1995 and prior to the effective date of this Act, for tax year 1997-98 and subsequent years, the ad valorem property tax on each such property, the owner or user of which continues to be subject to such a fee, assessment, or other charge except state income taxes, shall be decreased by an additional amount equal to the portion of the fee, assessment, or other charge which was formerly paid through property taxes until such time as voters approve the fee, assessment, or other charge.

(b) The limitations of (a) of this subsection shall not apply to a new or increased fee, assessment or other charge, the imposition or enactment of which directly results in an equal or greater offsetting reduction in property taxes levied in the same taxing district, providing that the reduction is in addition to the reductions and limitations set forth elsewhere in this Act.

Return to [previous location](#).

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2. Article XI, section 11g(3)(a), provides that its voter approval requirement applies "[o]n and after the effective date of this section." Section 11g became effective 30 days after it was approved by the people, or December 5, 1996. See Or Const Art IV, § 1(4)(d).

Return to [previous location](#).

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3. Ballot Measure 2 (1984) read, in pertinent part:

(2) The [one and on-half percent ad valorem property tax] limitation imposed by subsection (1) shall not apply to ad valorem taxes or special assessments levied to pay the interest and redemption charges on any bonded indebtedness authorized prior to or concurrent with the date upon which this amendment becomes effective.

Return to [previous location](#).

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4. We recognize that some forms of notes, for example bond anticipation notes, are particularly similar to bonds. This does not change our conclusion.

Return to [previous location](#).

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5. See Part V C of this opinion for an analysis of how this general definition of the term "levy" applies to tax increment revenues generated by urban renewal plans.

Return to [previous location](#).

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6. We assume that the people were generally aware of the taxation system in place at the time they approved Article XI, section 11g, of the Oregon Constitution and that they intended section 11g to operate within that taxation system. See 46 Op Atty Gen 388, 395 (1990).

Return to [previous location](#).

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7. The portion of a taxing unit's ad valorem taxes that is legally dedicated to the payment of bonded debt should be at least equal to the unit's minimum bond payment obligations for the tax year. However, the existence of such a minimum obligation does not automatically result in the requisite funds being legally dedicated to meet that obligation. For example, a taxing unit would be subject to breach of contract claims if it fails to meet its bond payment obligations, but its use of tax revenues for other purposes would not constitute an improper use of funds unless those funds were legally dedicated to the payment of bonded debt.

There are a number of circumstances under which tax revenues would be legally dedicated to the payment of bonded debt. For example, taxes that are levied for the specific purpose of paying bonded debt would be legally dedicated to that purpose. Moreover, as discussed in the text, some taxes are statutorily required to be used to pay bonded debt. See, e.g., ORS 238.685(2)(a). If a taxing unit certifies or classifies a portion of its ad valorem taxes as being for the payment of bonded indebtedness, such a certification or classification probably would be legally binding as to the use of those funds. See ORS 310.145(1), 310.060, 310.143.

There may be other situations in which a portion of the taxing unit's tax revenues would be legally dedicated to the payment of bonded debt. If you have questions about any specific situation not discussed in this opinion, you should seek the further advice of this office.

Return to [previous location](#).

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8. The current procedures for assessing property taxes to pay bonded debt vary considerably depending on the taxing unit and the type of bond involved. Moreover, current law may not provide adequate procedures for identifying the portion of a taxing unit's property tax assessment that is legally dedicated to the payment of bonded debt. Cities, school districts and other public corporations that are authorized to levy or impose ad valorem taxes must certify to the assessor the amount to be levied for the payment of bonded debt. ORS 310.060(2)(c), 310.143(1). In addition, local governments are authorized to adopt ordinances or resolutions that classify the taxes imposed by it into various categories, one of which is "[t]axes to pay principal and interest on exempt bonded indebtedness." ORS 310.145(1)(d).

Although certification and classification procedures such as these may adequately identify the amount to be used to pay bonded debt for purposes of section 11g, the amount certified or classified pursuant to these and other existing statutes may not necessarily reflect the amount to be legally dedicated for the payment of bonded debt during the ensuing tax year because such certification or classification is not the same as legal dedication. Consequently, it may be necessary for the legislature to prescribe procedures for identifying in advance the amount of property taxes that are to be legally dedicated to the payment of bonded debt for the ensuing tax year.

Return to [previous location](#).

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9. Under this standard, the portion of a school district's general operating levy dedicated to the payment of bonded debt under ORS 238.685(2)(a) would not be

subject to the limitation in section 11g(1) and (2) as long as the amount is identifiable before the taxes are assessed.

Return to [previous location](#).

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10. Urban renewal agencies are required to certify the following information to the county assessor each year:

The amount of funds to be raised each year for the purpose of paying principal and interest on bonded indebtedness from each urban renewal area through the division of taxes that are not subject to the limits of section 11b, Article XI of the Oregon Constitution.

ORS 457.440(2)(a). If the amount to be certified under this section is equal to the amount that will be legally dedicated to the payment of bonded debt for the ensuing year, this certification would sufficiently identify the amount that is exempt from the section 11g limitations. It is possible, however, that the two amounts will be different. This would be the case if a portion of the agency's tax increment revenues is to be legally dedicated to the payment of bonded debt that is subject to the constitutional limits described in ORS 457.440(2)(a). For this reason, it may be necessary for the legislature to provide separate procedures for the identification of amounts that are exempt from the section 11g limitation.

Return to [previous location](#).

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11. The meaning of the term "context" is not self-evident. It certainly includes "other provisions of the same [enactment] and other related [enactments]." *PGE*, 317 Or at 611. Context also might include the surrounding historical milieu from which an enactment emerges. Although the Oregon Supreme Court has never included historical context in its definitions of first level sources, in two cases it has used it that way. *Fisher Broadcasting, Inc. v. Department of Revenue*, 321 Or 341, 898 P2d 1333 (1995); *Goodyear Tire & Rubber Co. v. Tualatin Tire & Auto*, 322 Or 406, 908 P2d 300 (1995); see generally Jack L. Landau, *Some Observations About Statutory Construction in Oregon*, 32 Willamette L Rev 1, 39-41 (1996).

Return to [previous location](#).

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12. We have reviewed some real-world projections of the effects of applying section 11g(1) literally in order to test whether there is a conflict between the literal formula in section 11g(1) and the general directive to reduce taxes. We did so with some caution for two reasons. First, revenue projections are frequently unreliable; second, the meaning of a legal enactment should not depend on some shifting state of facts so that in one time and place the enactment means one thing, and in another it means something different.

Projections from Legislative Revenue Office indicate that applying section 11g(1) according to its literal terms will achieve the purpose of section 11g to reduce taxes as inferred from other provisions within it. Text and context are not necessarily in tension with each other. If every taxing authority in Oregon imposes the maximum 1997-98 property taxes allowable based on comparison years' taxes that include bond taxes, section 11g(1) will produce tax reductions from 1996-97 property taxes for the substantial majority of Oregon property owners. Although the literal application will not necessarily result in the reduction of property taxes to the levels of the comparison years' taxes, the text and context of section 11g(1) do not necessarily demonstrate an intent to reduce property

taxes to the levels of a particular tax year, only to reduce taxes from their level at the time the voters approved section 11g, i.e., a reduction from 1996-97 tax levels.

Return to [previous location](#).

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13. The Ballot Title states in pertinent part:

summary: \* \* \* Limits future annual property tax increases to 3 percent, with exceptions.

estimate of financial impact: This estimate is based on the following assumptions: \* \* \* existing bond levies are exempt from this measure even if not voter approved.

The Explanatory Statement states in pertinent part:

For tax years following 1997-98, the measure would limit the amount by which property taxes could increase to three percent each year.

Ballot Measure 47 provides exceptions and restrictions. One exception is for property taxes levied to pay existing bonded indebtedness.

Return to [previous location](#).

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14. Because we conclude that the section 11g(1) and (2) limitations do not apply to the exceptions in subsections (3), (4) and (5), we do not address the second part of your question, i.e., how those exceptions affect the application of the section 11g(1) and (2) limitations.

Return to [previous location](#).

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15. Subsection (4)(c), which deals with subdivided property, imposes a separate limitation on the taxes that may be imposed after the subdivision but does not expressly authorize a tax increase in excess of the three percent limitation. Thus, it is possible to argue that the three percent limitation continues to apply to subdivided property subject to the additional limitation imposed by subsection 4(c).

There are two problems with that argument, however. First, once property is subdivided, its identity changes and the "property" on which the preceding year's tax was imposed no longer exists. Thus, the three percent limitation no longer has relevance. Second, subdividing a property typically increases its per-unit value. The combined value of the properties comprising the subdivision generally will exceed the original property's value by more than three percent. This being the case, the specific limitation for subdivisions in subsection (4)(c) would never apply if the properties comprising the subdivision were also subject to the three percent limitation. For these reasons, it is our opinion that, for the tax year after the year in which property is subdivided, the three percent growth limitation in section 11g(2) does not apply. Instead, the property is subject to the specific limitation for subdivided property in subsection (4)(c).

Return to [previous location](#).

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16. If the property is depreciating in value, 1994-95 would not necessarily be the relevant comparison year because the depreciation in value from 1994-95 to 1995-96 could more than offset the increased value due to the improvements made in 1994-95. The 1995-96 taxes would have taken the value of the 1994-95 improvements into account and therefore would provide an appropriate basis for calculating the 1997-98 tax. However, section 11g(4)(a) clearly provides that the special limitation for improved property applies if the property is improved "during or after the 1994-95 tax year." That language is unconditional. We therefore conclude that the property improvement exception to the section 11g(1) limitation applies whenever the subject property is improved during the 1994-95 tax year, even if the relevant comparison year for purposes of applying section 11g(1) would have taken into account the value of those improvements.

Return to [previous location](#).

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17. If the subject property is improved during or after 1997-98, the applicable limitation for the subsequent tax year is the special limitation for improved property under subsection (4)(a), instead of the three percent growth limitation under section 11g(2).

Return to [previous location](#).

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18. This opinion does not address the limits, if any, imposed by federal law.

Return to [previous location](#).

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19. "It is elementary that the legislature has plenary authority except for such limits as might be found in the constitution or in federal laws." *La Grande/Astoria v. PERB*, 281 Or 137, 156, 576 P2d 1204, *affirmed on rehearing* 284 Or 173 (1978).

Return to [previous location](#).

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20. For example, the limitations in Article XI, section 11g, would prevail over the authorization in Article XI, section 11a. The latter provision explicitly authorizes special school district property levies while the former prohibits them.

Return to [previous location](#).

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21. Article VI, section 10, of the Oregon Constitution provides in relevant part:

The Legislative Assembly shall provide by law a method whereby the legal voters of any county \* \* \* may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern.

Article XI, section 2, provides in relevant part:

The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and

amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon \* \* \* .

Return to [previous location](#).

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22. For purposes of geographical or territorial classifications (the only type implicated by the hypothetical statute), if the statute survives scrutiny under Article I, section 32, it survives under Article IX, section 1. *Jarvill v. City of Eugene*, 289 Or 157, 171 n 15, 613 P2d 1 (1980).

Return to [previous location](#).

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23. We recognize that, for purposes of the limitations of section 11g(2), it is the aggregate of all taxes against the property that determines whether the limitation is exceeded, not the last tax levied or, for that matter, any one tax that is part of the aggregate.

Return to [previous location](#).

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24. In our earlier opinion, Op Atty Gen No. 8243, at 16, we addressed urban renewal taxes to pay urban renewal bonds, but we did not specifically address whether the urban renewal "tax increment" revenues were "ad valorem property taxes" for purposes of section 11g(3)(a).

Return to [previous location](#).

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25. Section 11g refers to ad valorem property taxes in varying ways. For example, section 11g(1) and (2) impose limitations on the "the ad valorem tax on each property." Section 11g(3)(a) imposes special voting requirements on certain "ad valorem property tax levies against real property. However, because there is nothing in section 11g to suggest otherwise, we conclude that each of the varying references to an ad valorem property tax has the same meaning except to the extent that they are qualified by other words. For example, section 11g(3)(a) refers to "ad valorem property tax levies against real property."

Return to [previous location](#).

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26. The restriction in section 11g(3)(c) on capital construction appears to be aimed at Article XI, section 11b(3)(b) (Measure 5 (1990)), which limits property taxes but exempts from its limitation taxes imposed to pay bonded indebtedness incurred for capital construction and improvements. Thus, by restricting the scope of "capital construction and improvements," section 11g(3)(c) narrows the scope of the section 11b(3)(b) exemption of taxes to pay bonded indebtedness.

Return to [previous location](#).

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27. "Real property" includes land and improvements to land. See second definition of "real" in Webster's Third New International Dictionary (unabridged 1993) at 1890.

Return to [previous location](#).

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28. Our conclusion that "property" includes centrally assessed utility property is also applicable to other companies that are centrally assessed under ORS 308.515. Subject to specific exceptions, the Department of Revenue is required to make an annual assessment of the property of the following companies: railroad transportation, railroad switching and terminal, electric rail and trackless trolley transportation, sleeping car, refrigerator car, private car, tank car, air transportation, water transportation upon the inland waters of Oregon, air or railway express, communication, heating, gas, electricity, pipeline, toll bridge. ORS 308.515(1)(a). The department must also annually assess refrigeration, tank and private cars of all companies not included in ORS 308.515(1)(a) when such cars are rented, leased or used in railroad transportation for hire. ORS 308.515(1)(b).

Return to [previous location](#).

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29. ORS 308.510 states, in pertinent part, that as used in ORS 308.505 to 308.665, "property" includes "all property, real and personal, tangible and intangible, used or held by a company as owner, occupant, lessee, or otherwise."

Return to [previous location](#).

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30. ORS 310.160 provides:

- (1) For purposes of determining whether the taxes on property to be imposed on any property exceed the limits imposed by section 11b, Article XI of the Oregon Constitution, the unit of property to be considered shall consist of all contiguous property within a single code area in the county under common ownership that is used and appraised for a single integrated purpose, whether or not that property is taxed as a single account or multiple accounts.
- (2) In the case of real property that is specially assessed under ORS 308.370, 308.377, 308.765 or 321,257 to 321.381 or any other law, or partially exempt from tax under ORS 307.250, 307.370 or 358.485 or any other law, the unit of property shall consist of all components of land and improvements in a single operating unit.
- (3) In the case of timeshare properties, the unit of property shall consist of all real property components associated with all timeshare property within a timeshare plan as described in ORS 94.808.
- (4) In the case of personal property that is not part of an operating unit consisting of both real and personal property, the unit of property shall consist of all items of personal property identified in a single property tax account.
- (5) In the case of land upon which an improvement is located, and the land and the improvements are owned by different persons, if the land and improvements are a single operating unit, the unit of property shall consist of the entire improved parcel.

Return to [previous location](#).

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31. One exception, of course, is Article XI, section 11g(3)(c), which amends Article XI with respect to capital construction and improvements for which bonded indebtedness may be authorized. In that particular, section 11g may well be inconsistent with legislation implementing section 11b.

Return to [previous location](#).

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32. For purposes of this opinion, we do not address whether section 11g(4)(a)(ii) requires the tax on the improvement be based on the improvement's real market value isolated from the unimproved property or upon the increase in real market value of the improved property attributable to the addition of the improvement.

Return to [previous location](#).

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33. For purposes of this example, none of the property tax figures includes any taxes levied to pay bonded indebtedness.

Return to [previous location](#).

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34. For purposes of this opinion, we express no opinion on what are similar properties similarly valued or how the average ad valorem property tax is calculated.

Return to [previous location](#).

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35. For the 1999-2000 tax year, assuming that none of the exceptions in subsections (3), (4) or (5) apply, the maximum permitted property tax on Property X would be \$1,822.64 (\$1,769.55 increased by 3%).

Return to [previous location](#).

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36. As discussed in Part III of this opinion, the legislature may enact legislation that imposes greater limits on taxation than section 11g, as interpreted by this opinion. Thus, the legislature could require that additions of property be netted against retirements of property and depreciation in valuing an improvement if that would result in taxes lower than allowed under section 11g(4)(a).

Return to [previous location](#).

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37. Section 11g does not define "major additions." This term has no fixed meaning, and we cannot discern from its text or context, or the Voters' Pamphlet materials, what the voters intended to be a "major" addition. Thus, this term cannot simply be interpreted, but will require further articulation of policy either in legislation or by administrative rule.

Return to [previous location](#).

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38. Our conclusion that personal property may be an improvement under section 11g(4)(a) is not dependent upon the particular definition of unit of property that may be adopted by the legislature for purposes of section 11g. Whether the new property being added to an existing property is a "major" addition to that existing property may depend upon that definition.

Return to [previous location](#).

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**Go to:**

[Top of page.](#)

[AG Opinions home page.](#)

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