ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 14, 2017

SENT VIA EMAIL ONLY: Jason.LARIMER@state.or.us

Jason Larimer
Corporation and Estate Section
Oregon Department of Revenue
955 Center Street NE
Salem, OR 97301

Re: Opinion Request OP-2017-1

Dear Mr. Larimer:

The Department of Revenue (department) asked a question relating to the use of corporate minimum tax revenues. The department's question is set out below, followed by our short answer and a discussion.

QUESTION

Is the corporate minimum tax imposed under ORS 317.090 a "tax levied on, with respect to, or measured by" the sale of motor vehicle fuel for purposes of Article IX, section 3a, of the Oregon Constitution as to receipts by corporations that sell motor vehicle fuel?

SHORT ANSWER

No. We conclude that receipts from the minimum tax under ORS 317.090 are not the type of "highway user taxes" that are dedicated to highway purposes under Article IX, section 3a.

DISCUSSION

1. Opinion Summary

Corporations are subject to an excise tax for the privilege of doing business in Oregon. ORS chapter 317 (Corporate Excise Tax Law). The tax generally is calculated as a percentage of Oregon taxable income. ORS 317.070. Sometimes corporations – even those with sizable Oregon sales - have little or no "taxable" income. Those corporations still must pay a "minimum" tax for the privilege of doing business in Oregon. ORS 317.090.

The minimum tax is a flat $150 for all S corporations. ORS 317.090(2)(b). The amount a C corporation owes depends on which dollar range the corporation's Oregon sales fall into.[1/] C corporations having less than $500,000 in Oregon sales, for example, must pay $150, while a corporation having sales between $10 million and $25 million must pay $15,000. ORS 317.090(a)(A),(H). The minimum tax peaks at $100,000 for corporations having $100 million or more in Oregon sales. ORS 317.090(a)(L).

Revenue from corporate excise taxes, including the minimum tax, primarily goes into the General Fund and is available to be used for any government purposes. ORS 317.850. No part of the receipts are directed by statute to the Highway Fund. An Oregon constitutional provision, Article IX, section 3a, on the other hand, requires that revenue from "[a]ny tax levied on, with respect to, or measured by" the sale of motor vehicle fuel be used solely for highway purposes. The department asks whether Article IX, section 3a, requires that proceeds from the minimum tax imposed on corporations whose revenues include sales of motor vehicle fuel be used for highway purposes.[2/]

The answer depends on whether the minimum corporate excise tax is a "tax levied on, with respect to, or measured by" the sale of motor vehicle fuel. We conclude that it is not. The corporate minimum tax statute does not directly levy a tax on the sale of motor vehicle fuel, refer to the sale of motor vehicle fuel at all, or measure the tax due by the amount of motor vehicle fuel sold. Rather, ORS 317.090 establishes a minimum corporate excise tax for the privilege of doing business in Oregon that applies to any corporation that owes more under its method of calculation than it would owe using the calculation in ORS 317.070. Although the amount owed depends on which dollar range a corporation's Oregon sales fall into, the fact that some corporate taxpayers sell motor vehicle fuel does not thereby transform ORS 317.090 into a motor vehicle fuel tax.

This interpretation accords with the Oregon Supreme Court's interpretation of substantially the same "tax levied on, with respect to, or measured by" language pertaining to sales of oil and natural gas in Article IX, section 3b of the Oregon Constitution. ***Northwest Natural Gas v. Frank,*** 293 Or 374, 648 P2d 1284 (1982).

2. Method for Interpreting Constitutional Provisions Adopted by Voters

The Oregon Supreme Court has a well-established method for interpreting constitutional provisions adopted by the voters. The goal is to discern the intent of voters who adopted the constitutional provision. ***State v. Harrell***, 353 Or 247, 254–55, 297 P3d 461(2013). Generally, the best evidence of the voters' intent is the text and context of the constitutional provision itself. *Id.* The context of a constitutional provision includes its historical context, including related statutes and regulations that existed at the time it was adopted. ***State v. Sagdal,*** 356 Or 639, 642, 343 P3d 226 (2015). Context also includes related ballot measures submitted to the people at the same election. ***Ecumenical Ministries v. Oregon State Lottery Commission,*** 318 Or 551, 559, 871 P2d 106 (1994). If the intent of the voters is not clear from the text and context of an initiated provision, the court examines the history of the provision. *Id.* In addition:

> "[C]aution must be used before ending the analysis * * * without considering the history of the constitutional provision at issue." * * *. The history of a referred constitutional provision includes "sources of information that were available to the voters at the time the measure was adopted and that disclose the public's understanding of the measure," such as the ballot title, arguments included in the voters' pamphlet, and contemporaneous news reports and editorials.

State v. Sagdal, 356 Or at 642-643 (internal citations omitted).

3. Corporate Excise Statutes

ORS chapter 317 is the Corporation Excise Tax Law. ORS 317.005. ORS 317.070 imposes an excise tax measured by a corporation's Oregon taxable income.[3/]

But some corporations doing business in Oregon – even a sizable business - do not have any taxable net income. This does not excuse such a corporation from excise tax liability.[4/] "A corporation that carries on business within Oregon must pay a minimum Excise Tax even though it does not generate a net income." ***Pacific First Federal Savings Bank v. Department of Revenue*** 308 Or 332, 338, 779 P2d 1033 (1989). That requirement is currently codified in ORS 317.090.

From 1931 to 2009, that minimum tax was $10. Or Laws 1931, ch 372, § 4. In 2010, the voters approved Ballot Measure 67, which amended ORS 317.090 to provide, in part:

> * * * * *.
>
> (2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, *for the privilege of carrying on or doing business* by it within this state, a minimum tax as follows:
>
> (a) If Oregon sales properly reported on a return are:
>
> (A) Less than $500,000, the minimum tax is $150.
> (B) $500,000 or more, but less than $1 million, the minimum tax is $500.
> (C) $1 million or more, but less than $2 million, the minimum tax is $1,000.
> (D) $2 million or more, but less than $3 million, the minimum tax is $1,500.
> (E) $3 million or more, but less than $5 million, the minimum tax is $2,000.
> (F) $5 million or more, but less than $7 million, the minimum tax is $4,000.
> (G) $7 million or more, but less than $10 million, the minimum tax is $7,500.
> (H) $10 million or more, but less than $25 million, the minimum tax is $15,000.
> (I) $25 million or more, but less than $50 million, the minimum tax is $30,000.
> (J) $50 million or more, but less than $75 million, the minimum tax is $50,000.
> (K) $75 million or more, but less than $100 million, the minimum tax is $75,000.
> (L) $100 million or more, the minimum tax is $100,000.

(b) If a corporation is an S corporation, the minimum tax is $150.

(3) The minimum tax is not apportionable (except in the case of a change of accounting periods), and is payable in full for any part of the year during which a corporation is subject to tax.

(Emphasis added.)

"Oregon sales" for purposes of ORS 317.090 is defined as the taxpayer's total Oregon sales as determined for apportionment purposes in the Oregon sales factor, either under ORS 314.665 or as defined by department rule. ORS 317.090(1). "Sales" means "all gross receipts of the taxpayer that are apportionable and not allocated to a particular state."[5/] ORS 314.610(7). "Sales" include sales of both tangible and other than tangible property. ORS 314.665. Hence, Oregon sales for purposes of ORS 317.090 are apportionable gross receipts and include sales of tangible and other than tangible property.

We must therefore examine the interplay between the corporate minimum tax statute and Article IX, section 3a.

4. Article IX, Section 3a, of the Oregon Constitution and the Corporate Minimum Tax

a. Text

Article IX, section 3a, of the Oregon Constitution, among other things, dedicates revenues from taxes on motor vehicle fuel sales to highway and road purposes:

(1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets, and roadside rest areas in this state:

(a) *Any tax levied on, with respect to, or measured by the* storage, withdrawal, use, *sale*, distribution, importation or receipt *of motor vehicle fuel or any other product used for the propulsion of motor vehicles*[.]

(Emphasis added).[6/]

ORS 317.090 does not, on its face, levy a tax on the sale of motor vehicle fuel – it expressly levies a tax on corporations "for the privilege of carrying on or doing business [in Oregon]." Nor is the tax measured by the sale of motor vehicle fuel. The tax is measured by the range into which any corporation's apportionable sales or gross receipts fall. Gross receipts include, but are not limited to, sales of the taxpayer's product. And even if a particular taxpayer sells motor vehicle fuel, the tax is not measured by the *amount* of fuel the taxpayer sells, nor even directly by the dollars it collects. Because taxpayers may charge different amounts for motor vehicle fuel, two taxpayers selling the same amount of fuel might generate different sales

dollars and owe different minimum tax amounts. Nor does ORS 317.090 expressly require or necessarily imply that taxpayers must account for the *amount* of motor vehicle fuel they sell to compute the tax – the Oregon sales as defined above are all that is required to compute the tax.

In addition, ORS 317.090 does not impose the minimum tax as an incremental direct tax on or measured by every dollar of gross income from a corporation's Oregon sales. Instead, the corporation either pays the flat $150 or a different set amount that increases with the dollar range into which the corporation's Oregon sales fall.

It is not as clear based on text alone whether ORS 317.090 imposes a tax "with respect to" the sale of motor vehicle fuel. "With respect to" means "as regards: insofar as concerns: with reference to." WEBSTER'S THIRD NEW INT'L DICTIONARY at 1934 (unabridged 2002).[7] ORS 317.090 does not "refer to" sales of motor vehicle fuels at all. It does not single out those sales for taxation, but applies generically to the sales of all corporations without regard to what they sell. By its express terms, ORS 317.090 is imposed on and concerns the privilege of doing business in Oregon, not the sale of motor vehicle fuel. It thus does not appear to concern the sale of motor vehicle fuel but, rather, how much business a corporation does in Oregon.

On the other hand, ORS 317.090 would be a tax "with respect to" sales of motor vehicle fuel if that language was intended in the broadest possible sense to mean a tax that has any connection to the sale of motor vehicle fuel. The precise question for purposes of this opinion is whether a tax "with respect to" the sale of motor vehicle fuels means a minimum tax imposed generically on all corporations for the privilege of doing business in Oregon, that does not refer to motor vehicle fuel sales or single out those sellers, if the amount which a taxpayer owes is determined by the category into which the dollar amount of its Oregon apportionable gross receipts fall, to the extent that the corporation's gross receipts can be attributed to sales of motor vehicle fuel. We turn to the context and history surrounding Article IX, section 3a for guidance to answer that question.

b. Historical Context and History

(1) **Gasoline tax statutes 1919-1942**

In 1919, with the emergence of the automobile, Oregon became the first state in the nation to impose a gasoline tax on motor vehicle fuel sales and distribution. City Club of Portland, Bulletin, *Report on Constitutional Amendment Limits Users of Gasoline and Highway User Taxes,* April 11, 1980, at 195-196. The gasoline tax was a true user tax, with road users paying in direct proportion to how much they used the roads. *Id.* at 195. The construction and maintenance of roads and highways was deemed to be "of an immense benefit to the persons operating" motor vehicles. Or Laws 1919, c 159, preamble. Gasoline taxes were imposed as a "license tax" of one cent per gallon on motor vehicle fuel. *See* Or Laws 1919, c 159 (imposing a one-cent per gallon license tax on motor vehicle fuel). By 1941, the tax had risen to five cents per gallon. Oregon Compiled Laws Annotated (1941), title 100, c 17. The gasoline tax statutes dedicated revenues from taxes "levied from gasoline" to highway uses. Or Laws 1919, c 159, OCLA (1941), title 100, ch 1.

(2) Enactment history of Article IX, section 3

Because gasoline taxes were originally dedicated to highway purposes only by statute, people feared the legislature could too easily divert revenues from highway uses into the General Fund. This prompted the people to enshrine in the constitution the requirement to use gasoline taxes only for highway purposes. ***State ex rel Sprague v. Straub***, 240 Or 272, 279, 400 P2d 29 (1965). The people added this requirement to the Oregon Constitution by adopting Article IX, section 3 in 1942.

The ballot title for the amendment stated its purpose to be to ensure that "proceeds from any *taxes levied on* storage, withdrawal, use, *sale*, distribution, importation or receipt of *motor vehicle fuel"* be used exclusively for the public highways. Voters' Pamphlet for the Regular General Election, November 3, 1942, at 10. (Emphasis added).

A legislative committee prepared the question, an explanation of the measure, and an argument in favor for the Voters' Pamphlet, all of which emphasized that the taxes to be dedicated solely to highway purposes were those imposed only on highway users. Its Argument In Favor explained the purpose of the amendment to be:

> [T]o reassert and to write into the constitution of this state, the principle underlying the gasoline tax and the other taxes on motor vehicle users which is, that the revenues received from these taxes and imposed ONLY on such users should be devoted solely to highway purposes as broadly conceived and defined in our present laws.

Id., Argument in Favor by the Legislative Committee on SJR 11 at 11 (emphasis in original). The argument cautioned that directing these funds to other purposes was unfair because motor vehicle users "paid real and personal property taxes, income taxes, gift taxes, school taxes, water taxes, sales taxes and all the rest, and IN ADDITION these special highway user taxes, which [they] fully expected would be used on the highways." (Emphasis in original).

The legislative committee stated the question to be "'Shall the Constitution be amended to guarantee that the gasoline, diesel fuel, ton mile and other taxes *paid only by motor vehicle users* be used for highways, roads and streets * * *?'" *Id.* (Emphasis added). The statement explained that the amendment made "certain that the present policy of this state to use *highway user funds* for highway purposes will be continued." *Id.* (Emphasis added). The Voters' Pamphlet also explained that the amendment made no change to the existing law and involved "no new or increased taxes." *Id.*

That historical context and history demonstrates that the voters understood Article IX, section 3 to apply to "special highway user taxes" that the taxpayers would expect to fund the construction and maintenance of the highways. It also shows that such taxes were considered to be distinct from other income or sales taxes that taxpayers might also have to pay. Taxpayers paid the highway user taxes roughly in proportion to their highway use. It further demonstrates that the provision was intended to apply to taxes like the existing "gasoline tax," which was

imposed as a license tax of five cents per gallon on motor vehicle fuel. That tax expressly taxed gasoline and was calculated as an amount per gallon sold. In sum, the historical context and history strongly suggest that the provision was intended to apply only to taxes that distinctly and explicitly tax motor vehicle fuel sales and users. The history does not suggest that the voters intended the provision to apply expansively to taxes imposed generally on all corporations based on their sales with no reference or attempt to single out motor vehicle fuel sales.

(3) 1980 Amendment – Article IX, section 3a

Article IX, section 3 was repealed in 1980 and replaced with Article IX, section 3a, but the language pertinent to this opinion was unchanged. The history of the enactment reveals that the purpose of the 1980 amendment was to remove some of the "highway related" uses of highway funds, such as funding police and parks, not to change the nature of the taxes subject to the limitation.

The amendment began as a joint legislative resolution (SJR 7), which was referred to and adopted by the people. ***Rogers v. Lane County***, 307 Or at 541-542. The Joint Legislative Committee was appointed to craft the legislative argument in support of the referred measure and the Oregon Supreme Court has relied on the argument as pertinent to construing the voters' intent. *Id.* at 542 n 6, 544. The voters' pamphlet materials for the 1980 amendment characterized the taxes subject to the constitutional provision as highway user taxes. The ballot title, explanatory statement and argument in favor prepared by the Joint Legislative Committee referred to the subject taxes as "gasoline taxes," "taxes on motor vehicle fuels," and "road user taxes." *See,* Voters' Pamphlet, Measure 1 (SJR 7), Primary Election May 20, 1980, Ballot Title at 4 (referring in the question to "gasoline, vehicle taxes"); *Id.,* Explanatory Statement at 4 (referring to "monies derived from taxes on motor vehicles and motor vehicle fuels[.]"); *Id.* Argument in Favor at 5 (referring to "gasoline taxes, weight mile taxes, and vehicle registration fees").

The only other argument in favor of the measure in the Voters' Pamphlet also referred to the taxes dedicated to the Highway Fund as "road user" taxes, specifically "the gasoline tax, vehicle registration fees and the truckers' weight-mile taxes." *Id.,* Argument in Favor by the Committee for Good Roads Again at 5. Other publications discussing the 1980 proposed constitutional amendment similarly referred only to the gasoline tax, weight-mile tax and vehicle registration fees as those "highway user taxes" dedicated to highway uses under the constitution. *See* City Club of Portland Bulletin, *Report on Constitutional Amendment Limits Uses of Gasoline and Highway User Taxes*, at 195-199.

The history surrounding the adoption of Article IX, section 3a, demonstrates the same voter understanding of the motor vehicle fuel sales taxes to which the provision applied as the history surrounding the adoption of the same language in Article IX, section 3. That intention does not appear to have been to dedicate to the Highway Fund revenues raised from a tax statute that neither directly and expressly targets the sale of motor vehicle fuel nor is measured directly or specifically by the amount of fuel sold.

We next examine pertinent case law and Attorney General Opinions, which corroborate this view.

5. Pertinent Oregon Cases

a. *Northwest Natural Gas v. Frank*

The Oregon Supreme Court has interpreted language used in Article IX, section 3b that is substantially identical to the language in section 3a, and concluded that it did *not* apply to a tax based on gross receipts. Section 3b is closely related to Section 3a and was adopted by Oregon voters in the 1980 general election. (Ballot Measure 3, created through HJR 6 (1979), and adopted by the people November 4, 1980). Article IX, section 3b, dedicates to the Common School Fund the proceeds from taxes "levied on, with respect to or measured by" the sale of oil and natural gas (excluding taxes that would be subject to Article IX, section 3a).

In ***Northwest Natural Gas v. Frank***, 293 Or 374, 648 P2d 1284 (1982), the court considered whether a statute that imposed an assessment on energy resource suppliers to fund the Department of Energy violated Article IX, section 3b. The statute imposed the assessment based on the number of units of energy sold by the supplier as a share of the total number of units of energy sold by energy resource suppliers in Oregon. The legislation contained an alternative mechanism to fund the Department of Energy if the court found the first assessment to violate Article IX, section 3b. The alternative assessed energy resource suppliers based on the ratio that the supplier's "annual gross operating revenue" bore to the total Oregon gross operating revenue of all energy suppliers.

The court held that the tax based on "units of energy sold" was measured by the sale of oil and natural gas, which must go to the Common School Fund under Article IX, section 3b. *Id.* at 376. But the court held that the alternative tax "based on gross revenues was not subject to the constitutional amendment." *Id.* at 379. In other words, the court construed a tax *imposed only on the suppliers of energy resources,* the amount of which was determined by the supplier's gross operating revenues, *not* to be a tax "levied on, with respect to, or measured by" the sale of oil and natural gas. But a tax imposed on those same entities and measured by the "units of energy sold" *was* such a tax.

The court's interpretation of the language in section 3b is consistent with our interpretation of substantially the same language in section 3a. That is, a tax "levied on, with respect to, or measured by" the sale of motor vehicle fuel (or oil and natural gas) does not mean a tax measured by gross receipts, rather than specifically by the sale of such fuels, even if gross receipts for some taxpayers include the sale of those fuels. The corporate minimum tax has even less connection to the sale of motor vehicle fuel than the tax at issue in ***Northwest Natural*** had to the sale of oil or natural gas, because the latter was imposed *only* on energy producers.

b. *Automobile Club of Oregon v. State*

Another case addressed whether an assessment *measured by the receipt of motor vehicle fuel* into underground storage tanks was a tax measured by the storage of motor vehicle fuel under Article IX, section 3a. ***Automobile Club of Oregon v. State***, 314 Or 479, 488-489, 840 P2d 674 (1992). The underground storage tank assessment imposed the tax at a rate per gallon of motor vehicle fuel intended for resale and stored in a storage tank. Or Laws 1991, ch 863, § 18. The court held that tax to be a tax measured by the storage of motor vehicle fuel. The corporate minimum tax is distinguishable from the underground storage tank assessment as it is a generally applicable corporate tax imposed on the privilege of doing business in Oregon and not a tax explicitly on the sale of motor vehicle fuel nor measured by the amount of gallons of motor vehicle fuel sold.[8/]

6. Attorney General Opinion

Last, we consider a pertinent opinion issued by this office. In that opinion, DEQ asked us to evaluate for compliance with Article IX, section 3a, potential statutory mechanisms to assess businesses that contribute most to hazardous material spills, primarily dealers in motor vehicle fuel, to be used to fund the leaking underground storage tank program. The first assessment considered was measured by the "gross operating revenue" of the business. Citing ***Northwest Natural Gas v. Frank***, the opinion concluded that a tax on gross operating revenue (meaning gross receipts from sales or services in the state) would not be subject to Article IX, section 3a. Letter of Advice dated February 6, 1987, to Mr. Richard P. Reiter, Department of Environmental Quality (OP-6066) at 3.

The opinion also concluded that an underground storage tank permit requirement "that was not limited to tanks storing oil or motor vehicle fuel" would not be subject to Article IX, section 3a. *Id.* On the other hand, if the fees were assessed "merely because of the storage of these products, or if the size of the fee depended on the *amount of fuel* stored or passing into or out of the facilities, then the funds must be dedicated to highway purposes." *Id.* (Emphasis added).[9/] The opinion further concluded that moneys derived from the corporate excise tax measured by net income were not subject to Article IX, section 3a, because, although net income may be influenced by motor vehicle fuel sales, it did not directly fall on the sale of those products. *Id.* at 2.

That opinion construes Article IX, section 3a to apply only to taxes that specifically and directly tax the storage of motor vehicle fuel and not to generally applicable taxes even as imposed on those who store motor vehicle fuel. A tax on gross proceeds or net income, even as applied to companies who store motor vehicle fuel in underground storage tanks is not a tax on the storage of motor vehicle fuel.

CONCLUSION

For the reasons discussed above, based on the text, context, legislative history, and pertinent case law and attorney general opinions, we conclude that the corporate minimum tax is not a tax levied on, with respect to, or measured by the sale of motor vehicle fuel for purposes of Article IX, section 3a of the Oregon Constitution.

Sincerely,

Steven A. Wolf
Chief Counsel
General Counsel Division

MSC:saw:nog/pjn/DM8025094

[1/] "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year. ORS 314.730(1). "S corporation" means, "with respect to any taxable year, a corporation for which an election under section 1362(a) of the Internal Revenue Code is in effect for such year." ORS 314.730(2). Such an election by an eligible corporation means that the corporation itself ordinarily does not pay federal income tax. Instead, the corporation's income, losses, deductions, and credits are passed through to its shareholders.

[2/] Because Article IX, section 3a, governs the use of proceeds from the taxes to which it refers and not the collection of taxes, any challenge would not be to the corporate minimum tax itself, but to ORS 317.850, the statute dedicating its proceeds to the General Fund. *See* ***Budget Rent-A-Car of Washington-Oregon Inc. v. Multnomah Cty***, 287 Or 93, 99, 597 P2d 1232 (1979) ("Article IX, section 3, by its express terms governs the use of the proceeds from the taxes to which it refers, not the collection of the taxes.")

[3/] ORS 317.070 provides:

> *Every* centrally assessed corporation, the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.681, and every mercantile, manufacturing and business corporation and every financial institution doing business within this state, e*xcept as provided in ORS 317.080 and 317.090,* shall annually pay to this state, *for the privilege of carrying on or doing business by it within this state, an excise tax* according to or *measured by its Oregon taxable income*, to be computed in the manner provided by this chapter, at the rate provided in ORS 317.061.

(Emphasis added). Under ORS 317.061, the tax is imposed as a percentage of taxable or "net" income. The "Excise Tax is a tax on corporations that do business within the state * * * *measured by* net income as statutorily defined." ***Pacific First Federal Sav. Bank v. Department of Revenue***, 308 Or 332, 337, 779 P2d 1033 (1989) (emphasis in original). "[T]he Excise Tax 'is not a tax on net income, but rather is a tax on the privilege of doing business.'" *Id.*

[4/] The predecessors to both ORS 317.070 and ORS 317.090 were originally enacted as part of the same section of the Corporate Excise Tax Law, which provided in relevant part:

> (a) Every mercantile, manufacturing and business corporation doing or authorized to do business within this state, except as hereinafter provided, shall annually pay to this state, *for the privilege of carrying on or doing business* by it within this state, *an excise tax* according to or measured by its net income, as herein defined, to be computed in the manner hereinafter provided * * * *In any event, each such corporation shall pay annually to the state, for the said privilege, a minimum tax of $25.*

Or Laws 1929, c 427, § 6. Thus, the corporate excise tax measured by net income and the minimum corporate excise tax have always been closely tied and have been imposed on corporations for the privilege of carrying on or doing business in the state since they were enacted.

[5/] This definition of "sales" applies for purposes of both the minimum tax and the corporate excise tax measured by net income.

[6/] For the sake of simplicity, we refer to motor vehicle fuel as including any other product used for the propulsion of motor vehicles.

[7/] We use the modern dictionary even though the language was first adopted in 1942 and later re-adopted in 1980, because the dictionary definitions have not changed appreciably.

[8/] The Ohio Supreme Court has held a "Commercial Activity Tax" on corporations measured by gross income to be subject to Ohio's analogue to Article IX, section 3a. ***Beaver Excavating Company et al. v. Testa,*** 983 NE 2d 1317, 1326 (2012). For four reasons we conclude that this decision does not provide helpful guidance for construing the pertinent Oregon laws. First, the Ohio decision is inconsistent with the Oregon Supreme Court's holding in ***Northwest Natural Gas*** that a tax based on gross revenues is not subject to Article IX, section 3b. *See also,* ***Sprague v. Straub***, 240 Or at 279 (holding that "[t]he highway money involved [under Article IX, section 3a] is derived from gasoline taxes and other vehicle fees and licenses."). Second, we construe Oregon's language in the light of its historical context and history, which demonstrates a narrower understanding of the taxes to which the Oregon provision applies than the Ohio court determined applied to the Ohio provision. Third, the Ohio statute was largely a direct tax imposed as a percentage of a company's gross revenues. As discussed, ORS 317.090 does not impose a direct tax measured by sales. And, lastly, the language of the Ohio provision is different from the language of Oregon's provision as the Ohio provision applies to "moneys derived" from taxes "relating to" motor vehicle fuel sales. ***Beaver Excavating,*** 983 NE 2d at 1326.

[9/] The legislature subsequently imposed an underground storage tank assessment assessing a fee of a penny per gallon of motor vehicle fuel deposited into an underground storage tank. The Attorney General opined that the assessment was not a "tax," a conclusion subsequently rejected by the Oregon Supreme Court in ***Automobile Club of Oregon v. State,*** 314 Or at 485 (holding the "assessment" to be a "tax" measured by the receipt of motor vehicle fuel into storage tanks" subject to Article IX, section 3a).