

This opinion is issued in response to questions presented by William C. Scott, Director, Oregon Economic Development Department, concerning the effects of newly enacted Article XI, section 11, of the Oregon Constitution on tax exemptions for qualified properties under the Enterprise Zone Act of 1989, ORS 285.560 to 285.617, or for properties of "key industry" development projects under ORS 285.399, 285.765(3) and 307.123. New sections 11 and 11a of Article XI were approved by the people as Ballot Measure 50 (Measure 50) at the May 20, 1997, special election.⁽¹⁾ Measure 50 also repealed the existing sections 11 and 11a, as well as sections 11f, 11g, 11h, 11i and 11j, which were approved by the people as Ballot Measure 47 at the November 5, 1996, general election. Like its predecessor, the new Article XI, section 11, limits the amount of ad valorem property taxes that may be imposed on properties, but it does so by different means.

FIRST QUESTION PRESENTED

Does the expression "disqualified from exemption, partial exemption or special assessment," under the newly adopted Article XI, section 11(1)(c)(E), of the Oregon Constitution, apply to:

- (a) Expiration of an enterprise zone exemption after three, four or five years under ORS 285.597(3), 285.605(3), (4) or (6)?
- (b) Expiration of a key industry development project exemption after fifteen years under ORS 307.123(1)(b)?

ANSWER GIVEN

A property would be disqualified for exemption under Article XI, section 11(1)(c)(E), of the Oregon Constitution upon the expiration of the statutory period for which the exemption may be allowed, as provided in ORS 285.597(3), 285.605(3), (4) or (6) and 307.123(1)(b).

SECOND QUESTION PRESENTED

How is the growth in taxable value of property subject to the partial key industry development project exemption under ORS 307.123(1)(a) to be calculated?

ANSWER GIVEN

The taxable value of property subject to the partial exemption allowed by ORS 307.123(1)(a) is, initially, \$100 million and increases annually at the rate of six percent, prior to the tax year commencing July 1, 1997, and at the rate of three percent on and after that date. The property that is "taxable at its assessed value" under ORS 307.123(1)(a) is the entire property subject to the partial exemption. There is no provision in law for a separate assessment of some portion of the property equal to the taxable value. Therefore, the limitations of "assessed value" and "maximum assessed value" that appear in Oregon Laws 1997, chapter 541, section 6, apply to the whole property, not separately to the taxable value.

THIRD QUESTION PRESENTED

ORS 285.615(4) requires the county assessor to enter on the tax roll the real market value of a property subject to an enterprise zone exemption and also to note the amount of property taxes that would be due if the property were not exempt. Does Measure 50 authorize or require the assessor to adjust this notation subject to the three percent limitation or other provisions of the measure?

ANSWER GIVEN

No. Measure 50 does not authorize or require the county assessor to change the tax roll entries required by ORS 285.615(4) of the assessed value of a property subject to an enterprise zone exemption or the amount of additional taxes that would be due if the property were not exempt. However, the limitations of Measure 50 do change the amount of additional taxes that would be due if the property were not exempt.

FOURTH QUESTION PRESENTED

Upon the expiration or disqualification of property for an enterprise zone or a key industry development project exemption from property taxes, would the taxation increase be governed by section 11(1)(c)(E), which relates to disqualification from exemptions, or section 11(1)(c)(A), which relates to new improvements to property, or both?

ANSWER GIVEN

Under Measure 50, both section 11(1)(c)(E) and 11(1)(c)(A) could apply, but in both instances the same provision authorizes taxes in excess of the three percent limitation of section 11(1)(b).

DISCUSSION

I. "Disqualified for Exemption or Special Assessment"

With certain exceptions Measure 50 generally limits the growth of property taxes to three percent per year. Or Const Art XI, § 11(1)(b). One exception is found in Article XI, section 11(1)(c), which reads in pertinent part:

(c) Notwithstanding paragraph (a) or (b) [relating to the three percent limit on the growth of property taxes] of this subsection, property shall be valued at the ratio of average maximum assessed value to average real market value of property located in the area in which the property is located that is within the same property class, if on or after July 1, 1995:

* * * * *

(E) The property becomes disqualified from exemption, partial exemption or special assessment[.]

The obvious intent of this provision is to restore, subject to the limitation of equal treatment, the value of property for property tax purposes upon the disqualification of the property for an exemption or special assessment. However, the constitution does not define what is meant by "disqualified." Because it does not have a well-established special technical or legal meaning, "disqualified" should be understood in terms of its plain and 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 look to standard dictionaries for guidance as to the common meanings of words. Webster's Third New International Dictionary (*hereinafter* Webster's) (unabridged 1993), at 655, defines "disqualify" as:

1 : to deprive of the qualities, properties, or conditions necessary for a purpose * * *

2 : to deprive of a power, right, or privilege * * * <he was *disqualified* for citizenship by certain controversial restrictions> <two infringements of the rules will ~ a player from further participation in the game>

With the foregoing definitions in mind, we turn next to the provisions of the tax laws that govern the termination of property taxation exemptions for qualified properties within enterprise zones and properties of key industry development projects.

A. Expiration of an Enterprise Zone Exemption

Under ORS 285.600 and 285.615(1), a qualified firm that owns or leases qualified property located in an enterprise zone may apply for an exemption from property taxes on the property as allowed under the provisions of ORS 285.597. If the assessor determines that the property meets the requirements of ORS 285.597, the assessor is required to grant the exemption for each year that the property is exempt from taxation.⁽²⁾ ORS 285.615(4). This exemption first applies to the tax year immediately following completion of the construction, addition, modification or installation of the property for which the exemption was sought and for two succeeding tax years if the property remains qualified for the exemption.⁽³⁾ See ORS 285.597(3)(a). Notwithstanding the foregoing, the city or county acting as enterprise zone "sponsor" under ORS 285.560(11) may set a period of tax abatement of up to five consecutive tax years under the provisions of ORS 285.605(3),(4) and (6).

Thus, a property may qualify for the enterprise zone exemption only for the period of time during which the exemption is granted. Correspondingly, the expiration of that period is a disqualifying event, no less significant to the continuation of the exemption than any other basis for disqualification. Therefore, we conclude that the expiration is a disqualification of exemption for purposes of Article XI, section 11(1)(c).

B. Expiration of Key Industry Development Project Exemption

Pursuant to ORS 285.399, the Oregon Economic Development Commission (commission) may determine that the real and personal property of an "eligible project" that directly benefits a "key industry" is eligible for the partial property tax exemption provided in ORS 307.123, if the total cost of the eligible project exceeds \$100 million.⁽⁴⁾ An "eligible project" is an economic development project used in connection with a revenue producing enterprise, except electrical facilities, and which satisfies commission rules. *See* ORS 285.315. A "key industry" is one in which firms sell goods or services in national or international markets and which makes a major contribution to the economy of Oregon. *See* ORS 285.765(3),(5). If the commission has determined that the property is exempt under ORS 285.399, the first \$100 million of real market value of the eligible project, initially, and increasing annually, is taxable and the remainder of the real market value is exempt from taxation for 15 years. ORS 307.123(1)(b) (see further discussion below).

The Economic Development Commission's determination of eligibility for exemption is conclusive as long as the property included in the eligible project is constructed and installed in accordance with the application that was approved by the commission. ORS 307.123(5). However, if the owner or lessee of the exempt property fails to pay the fee required by ORS 285.400(4)(b) when due, the exemption must be revoked and the property is fully taxable for the following tax year and each year thereafter for which the fee remains unpaid. ORS 307.123(6). If the fee is paid after the exemption is revoked, the property again may become eligible for exemption, beginning with the tax year following the payment. Reinstatement of exemption following such payment, however, does not extend the 15-year exemption period.

Our analysis of the expiration of the key industry exemption under ORS 307.123(1) is the same as that of the expiration of the enterprise zone exemption under ORS 285.617. Both expirations constitute a disqualification of exemption for purposes of Article XI, section 11(1)(c).

II. Calculation of the Growth of the Taxable Portion of Property

ORS 307.123(1)(a), as amended by Oregon Laws 1997, chapter 541, section 412 (SB 1215-B), states:

The first \$100 million in real market value, increased annually for growth at the rate of three percent shall be taxable **at its assessed value** under section 6 of this Act.

(Emphasis added.) These amendments took effect with the tax year commencing July 1, 1997. *See* Or Laws 1997 ch 541 § 464. Before that date, ORS 307.123 provided that the taxable portion of the property value increased six percent annually. Moreover, there was no reference to the special concept of "assessed value."

Section 6(2) of the Act provides that the "assessed value of the property" shall equal the lesser of the property's "maximum assessed value" or the property's real market value. The "maximum assessed value" is equal to 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year, whichever is greater. Section 6(1).

In determining how to calculate the growth in taxable value under ORS 307.123(1)(a), as amended, it is necessary to determine to what subject the word "its," in the expression "its assessed value," refers. In the sentence, the subject may appear to be the words "[t]he first \$100 million in real market value." However, that interpretation does not make sense because the entire property is assessed, not some taxable value. Plainly, the taxable value of the property grows by three percent annually. However, the entire property is taxable at its "assessed value under section 6." This means that the taxable value may grow until it reaches the "assessed value," which is defined in section 6(2) as the lesser of the maximum assessed value or the real market value. Although it may grow, the taxable value may not exceed this assessed value.

III. Duty to Enter Real Market Value and Note Taxes on Tax Roll

Although Measure 50 provides new limitations on property taxes that will tend to limit the significance of real market value to the property taxes imposed and to change the amount of additional taxes that would be due if the property were not exempt, these new limitations do not alter the basic duty of the county assessor under ORS 285.615(4) to enter on the tax roll the real market value of a property subject to an enterprise zone exemption and the amount of additional taxes that would be due if the property were not exempt.

As amended by Oregon Laws 1997, chapter 541, sections 421, 422, ORS 285.615(4) provides:

(4) If the assessor determines the property for which exemption is sought satisfies the requirements of ORS

285.597, the assessor shall grant the exemption. Thereafter, for each assessment year that the property is exempt from taxation, the assessor shall:

(a) Enter on the assessment roll, as a notation, the assessed value of the property as if it were not exempt under ORS 285.597.

(b) Enter on the assessment and the tax roll, as a notation, the amount of additional taxes that would be due if the property were not exempt.

(c) Indicate on the assessment and tax roll that the property is exempt and is subject to potential additional taxes as provided in ORS 285.617, by adding the notation "enterprise zone exemption (potential additional tax)."

Measure 50 retains the concept of real market value. For example, Article XI, section 11(1)(a), establishes the "maximum assessed value" for the tax year commencing July 1, 1997, as 90 percent of the real market value for the tax year beginning July 1, 1995. In addition, section 11(1)(c) and other provisions of section 11 limit property tax increases to the ratio of average maximum assessed value to average real market value. Thus, the basis for limiting property taxes now depends on the "maximum assessed value" and not solely or even directly on real market value. In any event, such limitations reduce "the amount of additional taxes that would be due if the property were not exempt" for purposes of ORS 285.615(4)(b).

However, neither these nor any other provisions of the new section 11 are inconsistent with the basic duties of the county assessor under ORS 285.615(4) to note the real market value of the property on the assessment roll or to note the additional amount of taxes that would be due if the property were not exempt. Because there is no inconsistency, section 11 does not limit the assessor's duty. Moreover, section 11 includes no provision expressly or impliedly authorizing or requiring the assessor to make notations on the assessment and tax roll in addition to those prescribed by ORS 285.615(4).

IV. Taxation of Property upon Termination of Exemption

Because the question concerning the taxation of property upon termination of exemptions was presented to this office when Measure 47 was still law and Measure 50 was not yet law, it is useful to compare the two provisions. The now repealed Article XI, section 11g(2)(a) of Measure 47 limited the growth of ad valorem property *taxes* to three percent per year. In contrast, the recently approved Article XI, section 11(1)(b) of Measure 50 limits growth of the property's *maximum assessed value* to three percent per year. Both constitutional amendments have exceptions to these limitations for improvements and for property that has become disqualified from exemption.

With respect to improvements, the repealed Article XI, section 11g(4)(a) provided in pertinent part:

(4)(a) 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.

Now repealed section 11g(5) provided:

(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.

Thus, section 11g(5) did not include the alternative, more restrictive limitation found in section 11g(4)(a)(ii) that the tax not exceed 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.

Newly adopted Article XI, section 11(1)(c), treats both issues in a single provision, subject to the same standard, as follows:

(c) Notwithstanding paragraph (a) or (b) [the three percent limitation on growth of "maximum assessed value"] of this subsection, property shall be valued at the ratio of average maximum assessed value to average real market value of property located in the area in which the property is located that is within the same property class [to be defined by legislation], if on or after July 1, 1995:

(A) The property is new property or new improvements to property;

* * * * *

(E) The property becomes disqualified from exemption, partial exemption or special assessment;

* * * * *

(d) Property shall be valued under paragraph (c) of this subsection only for the first tax year in which the changes described in paragraph (c) of this subsection are taken into account following the effective date of this section. For each year thereafter, the limits described in paragraph (b) of this subsection apply.

Obviously, after completion of an enterprise zone or key industrial project, the corresponding exemption should end. At that point, the maximum assessed value of the property could increase above the three percent limitation due to the improvements, under section 11(c)(A), and as property becomes disqualified for exemption under section 11(c)(E). Although the maximum assessed value may exceed the three percent limitation in the first year following these two events, for each subsequent year the three percent limitation would apply to the property.

HARDY MYERS
Attorney General

1. For a discussion of the principles used by courts in interpreting amendments to the Oregon Constitution approved by the people as ballot measures, we refer you to 48 Op Atty Gen 67, 73-74 (1996).

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2. Under certain circumstances not relevant here, the assessor is required to disqualify the property for the tax year following a disqualifying event, and then to compute and assess taxes against the property for each year for which the property had been granted an exemption and a penalty equal to 20 percent of the total amount so computed. See ORS 285.617(2)(a) and (4).

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3. In this respect, this exemption and the construction work in progress exemption under ORS 307.330 and 307.340 are mutually exclusive.

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4. This exemption is sometimes referred to as the "strategic investment program exemption" because of its historic connection to the revenue bond program of that name. See generally ORS 285.398 to 285.402.

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