

# Just When We Thought Measure 97 Was Dead-It May Be Back!

02.17.17 01.07.26

As I [reported previously](#), Oregon Measure 97 was overwhelmingly defeated by voters in the state's general election this past November. It certainly appeared that the voters spoke loudly and clearly on November 8, 2016, when they voted to defeat the ill-designed amendments to the Oregon corporate minimum tax regime contained in Measure 97. Flaws in the legislation included:

1. Measure 97 contained a corporate alternative tax based on Oregon gross receipts - a tax that has no relationship to profits.
2. Measure 97 proposed a corporate alternative tax applicable only to C corporations. S corporations, entities taxed as partnerships and Oregon benefit companies would have escaped the proposed tax altogether.
3. While Oregon benefit companies would have escaped the proposed tax, non-Oregon benefit companies were to be subject to the tax. As a result, Measure 97 was clearly in conflict with the Interstate Commerce Clause.

## **Enter Legislative Concept 3548**

On February 13, 2017, Oregon Senate Finance Committee Chairman Mark Hass (D) requested that Legislative Concept 3548 ("LC 3548") be released. LC 3548 is a legislative referendum to amend the Oregon Constitution in order to create a "Business Privilege Tax" based on gross receipts. It looks a lot like Measure 97. There are, however, some key differences, including:

1. LC 3548 is not limited to C corporations. Rather, it is broader - it applies to all types of business entities.
2. LC 3548 contains a tax rate, yet to be determined, that may not exceed 0.7% of gross receipts (subject to adjustment for inflation).
3. LC 3548 imposes a flat tax of \$250 on businesses with less than \$5 million (subject to adjustment for inflation) in Oregon gross receipts.
4. LC 3548 allows businesses with Oregon gross receipts less than \$150,000 (subject to adjustment for inflation) to escape the tax.
5. Measure 97 would have imposed a 2.5% tax on Oregon gross receipts of C corporations over \$25 million. LC 3548, however, broadens the base in that it applies to all business entities, but it reduces the tax rate

to no greater than 0.7% (subject to adjustment for inflation).

### **Still a Host of Unknowns**

LC 3548 leaves a lot of unanswered questions, including:

1. Is the tax rate graduated based upon levels of gross receipts above \$5 million, or will it be a flat rate?
2. Does LC 3548 replace the current Oregon minimum tax contained in ORS 317.090, which for C corporations ranges from \$150 to \$100,0001, or is it an additional tax to be imposed on businesses with Oregon-sourced income?
3. Does LC 3548 apply to tax-exempt organizations?
4. Is the tax to be imposed under LC 3548 a "minimum tax" or is the tax to be tacked on top of the existing income/excise tax that is imposed on Oregon businesses?

### **A Possible Rematch in the Works?**

If LC 3548 is adopted by the Oregon legislature, it will be submitted to voters for approval or rejection at a special election on May 16, 2017. If the legislature submits the referendum to the people, I expect a fight between proponents and opponents of LC 3548 will quickly ensue. Last time, Measure 97 proponents and opponents together spent more than \$42 million on their dueling campaigns surrounding the proposed legislation. I suspect a battle surrounding LC 3548 will be uglier and more costly. Stay tuned!

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1. For S corporations and partnerships, Oregon currently has a flat minimum tax of \$150.

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