Portland Clean Energy and Justice Measure (Gross Receipts Tax)

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Office of Management and Finance
City of Portland, Oregon

Background

This document will briefly review the administrative feasibility and expected revenues associated with the "Portland Clean Energy and Justice Measure" ("the Measure"). The Measure is a retail business gross receipts tax (GRT) with exemptions for food, medicine and internet sales. It applies only to businesses with global gross sales receipts of $1 billion or more, and Portland gross revenues of $500,000 or more. As proposed, the GRT would be in addition to the current Business License Tax (BLT), with a deduction or credit for the BLT payment.

Executive Summary

The Measure as written is estimated to raise between $35 and $51 million. However, the Revenue Division does not recommend implementing the Measure as written because it subjects a narrow group of 122 primarily retail taxpayers to the bulk of the tax, one of which would pay over $3 million. The Revenue Division recommends levying the tax on *all* businesses with global gross receipts of $1 billion rather than only those with *retail sales* of $1 billion. This has the benefits of spreading the tax over more payers and making it easier to administer and comply with. Other reasons are provided below.

Organization and Scope of the Review

This document begins by outlining the Measure as written, followed by revenue projections and estimated taxpayer impacts (Tables 1 and 1a). It then discusses issues with the Measure and proposes a number of variations designed to incrementally improve the Measure (Tables 2-5) while adhering as closely as possible to the apparent core intent of the Measure authors. Table 6 captures the final Revenue Division recommended approach: a universal GRT. The document concludes by briefly discussing administration, budget, impact on current BLT receipts, implementation timing, and limitations of the estimates.

The focus of this review is strictly on the tax portions of the Measure and not the programs it would fund.

Summary of the Measure as Written

The specific elements of the Measure are as follows:

- Applies only to "Large Retailers" which are defined by the Measure as:
  - A business "engaged in retail sales" in Portland, AND
  - With global gross receipts of $1 billion or more, OR
    - Is a subsidiary, franchisee or "otherwise owned or controlled" by a business with gross global receipts of $1 billion or more, including brand name, trademark or logo associations
  - Banks shall be considered Large Retailers if their global gross receipts are $1 billion or more
  - Large Retailer does NOT include:
    - Any manufacturer or other business that is not engaged in "Retail Sales" as defined below
    - Any cooperative recognized under state or federal law

      - Any franchisee or subsidiary whose annual gross revenue from retail sales within the City are less than $500,000 regardless of the annual revenue of the franchisor or national chain of which the business may be a part
      - A federal or state credit union

- Applies only to "Retail Sales" which are defined by the Measure as:
   - "The sale of products, goods or services to the general public by a Large Retailer physically located within the City," not including "internet sales"[1]

- The tax rate is 1% of Portland-apportioned adjusted gross revenue:
   - "A Large Retailer's in-City gross revenue is their gross revenue generated within the City from retail sales minus any taxes paid to the City to satisfy other tax requirements under the City of Portland's Business License Law"[2]
   - Exempt from the calculation of in-City gross revenue:
      - Qualifying groceries ("SNAP" approved)[3]
      - Medicine or drugs regulated by the U.S. Food and Drug Administration

Revenue Estimate: The Measure as Written

There are 955 businesses with global gross receipts of at least $1 billion operating in taxable capacities in Portland.[4] 107 (11%) of these businesses report Portland gross receipts of less than $500,000 and are therefore excluded from the revenue forecast.[5] Another 116 (12%) would certainly be liable under the Measure and will be referred to hereafter as "certain payers."[6] The remaining 732 (77%) would be liable on a case-by-case basis depending upon sales data provided on an annual GRT schedule that would be developed if the Measure is enacted, and filed along

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[1] According to the U.S. Census Bureau, E-commerce sales in the first quarter of 2017 accounted for 8.4 percent of total U.S retail sales. See www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf. The Revenue Division does not have information about local retail E-commerce sales and it is unclear how this provision of the Measure would be implemented locally, or which and how many taxpayers would be subject to the deduction. This provision may be intended as recognition that the City of Portland must adhere to the Internet Tax Freedom Act (the Act) which prohibits taxing internet access or imposing internet-only taxes. On the other hand, the Act does not exempt sales made on the Internet from taxation, as these may be taxed at the same state and local rate as non-Internet sales. In any case, we believe this deduction, however it may be implemented, is likely accounted for in the broad range estimates provided in the tables to follow.

[2] Tax paid under Portland City Code Section 7.02 (Business License Law, referred to in this paper and commonly as the Business License Tax) is therefore a deduction to Portland gross receipts arriving at adjusted Portland gross receipts which is then used as the base to compute the 1% tax. We believe the authors may have intended a credit rather than a deduction. Both scenarios are modeled below.

[3] USDA Supplemental Nutrition Assistance Program.

[4] Most of which are corporations and hundreds of which have widely recognized brand names. This information is based on tax year 2015 returns, the most recent available in most cases.

[5] The Measure calls for the taxation of subsidiaries, franchisees or businesses "otherwise owned or controlled" by a business with global gross receipts of $1 billion or more, so long as they have Portland gross receipts of at least $500,000, including "brand name, trademark or logo associations." The Revenue Division does not maintain this type of data so an assumption was made for forecasting purposes that any business with less than $500,000 in Portland gross receipts is exempted from the tax. If this exemption is going to be extended, it should be extended to all.

[6] The 116 certain payers were generally identified by their NAICS codes as voluntarily self-reported to the Revenue Division and spot-checked for accuracy.

with the current annual BLT return. The revenues forecasted in Tables 1-4 below are primarily based on a “floor” created by the 116 certain payers of the tax[7] and a “ceiling” based on state and federal data.[8] The estimate ranges are conservative and broad enough to encompass anticipated taxable retail sales associated with traditionally non-retail businesses (in other words, businesses reporting with NAICS[9] codes other than retail sales or Measure-taxable banking).

See Table 1 below for an estimate of revenues raised by the Measure as written.

Table 1. Estimated Tax Revenue
Measure as Written
BLT Deduction

Tax Rate	Low Revenue (millions)	High Revenue (millions)
1.00%	$35.3	$51.0

Table 1a. Taxpayer Statistics for Table 1, 116 Certain Payers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Estimated Average GRT
116	848	$372,126
Minimum GRT	Maximum GRT	Estimated Median GRT
$5,649	$3,767,092	$86,572

Table 2 is also an estimate of the Measure as written, but treats the BLT as a credit rather than a deduction. In other words, the GRT liability is reduced dollar-for-dollar by the amount paid under the BLT which may have been the intent of the author(s) of the Measure.

Table 2. Estimated Tax Revenue
Measure as Written
BLT Credit

Tax Rate	Low Revenue (millions)	High Revenue (millions)
1.00%	$28.3	$40.9

[7] For certain payers this information is based on tax year 2015 tax returns filed with the Revenue Division.
[8] U.S Census Bureau Economic Census (www.census.gov/quickfacts/) and Oregon Department of Revenue corporate excise and income tax data (www.oregon.gov/DOR/programs/gov-research/Documents/corporate-excise-income_102-405_2016.pdf).
[9] North American Industry Classification System. See www.census.gov/eos/www/naics/.

Table 2a. Taxpayer Statistics for Table 2, 116 Certain Payers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Estimated Average GRT
116	848	$298,035
Minimum GRT	Maximum GRT	Estimated Median GRT
$3,848	$2,699,629	$76,579

Issues to Consider with the Measure as Written

Decision makers may wish to consider the following issues.

1. The tax as written has no maximum liability (hereafter, "cap"). The tax as estimated in Table 1 results in a GRT assessment of over $3.7 million ($4.96 million including the BLT) for one taxpayer and GRTs of over $2 million for three others. While corporate relocation is a complex and costly decision and may or may not have an impact on Portland apportionment and tax liability (it depends on the nature of the business), it is possible some businesses may reassess their presence in Portland if faced with a tax increase of multiple millions of dollars. Under any scenario, the Revenue Division recommends a GRT cap of $1 million to minimize this risk. Million-dollar caps are modeled on all remaining scenarios (Tables 3-6).

2. The Measure states, "Large retail businesses with gross revenue greater than $1 billion a year have significant revenue and profits and are responsible for generating a substantial portion of the City's overall greenhouse gas emissions."[10] While this statement is undoubtedly true, it should be recognized that a number of non-retail businesses also have a significant carbon footprint and would pay little or no tax, undermining the rationale for choosing to tax retail over other sectors. Examples include but are not limited to commercial construction, oil and gas extraction, passenger car, truck and RV rental and leasing, mining operations, petroleum refineries and petrochemical manufacturing.[11]

3. A number of businesses that might at first seem taxable under the Measure will pay little or nothing. Examples include restaurants and fast food, Nike (NAICS 42391, Sporting and Recreational Goods and Supplies Merchant Wholesalers), 1-800 Flowers (NAICS 49221, Local Messengers and Local Delivery), Alaska Airlines (NAICS 48111, Scheduled Air Transportation), carpet installers and so on.

4. Some businesses will partially or wholly pass the GRT on to consumers in the form of a price increase.

5. The definition of terms such as "retail", "services" and "internet sales" will need to be clarified in detail and will have meaningful impacts on administration, revenues raised and taxpayer filing burden.

[10] Purpose (i), pg. 2.
[11] These are not hypothetical examples. Businesses operating in these sectors file Portland BLT tax returns.

Revenue Estimate: The Measure as Written with a $1 Million Cap

To address the issue of possible flight due to an excessive GRT as discussed above, the Revenue Division recommends a cap of $1 million on the GRT assessment. A capped GRT with a BLT deduction to Portland gross receipts is displayed in Table 3 below. A variation with a BLT credit is captured in Table 4.

Table 3. Estimated Tax Revenue
Measure as Written
BLT Deduction, $1M Cap

Tax Rate	Low Revenue (millions)	High Revenue (millions)
1.00%	$24.8	$35.9

Table 3a. Taxpayer Statistics for Table 3, 116 Certain Payers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Estimated Average GRT
116	848	$261,649
Minimum GRT	Maximum GRT	Estimated Median GRT
$5,649	$1,000,000	$86,572

Table 4. Estimated Tax Revenue
Measure as Written
BLT Credit, $1M Cap

Tax Rate	Low Revenue (millions)	High Revenue (millions)
1.00%	$22.2	$32.0

Table 4a. Taxpayer Statistics for Table 4, 116 Certain Taxpayers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Estimated Average GRT
116	848	$233,596
Minimum GRT	Maximum GRT	Estimated Median GRT
$3,848	$1,000,000	$76,579

Revenue Estimate: Universal GRT Approach with Exemptions

The Measure as written puts the taxpaying burden on too few taxpayers and introduces complexity and probable revenue leakage (by intentional or unintentional non-compliance). The focus on retail sales and exemptions like internet sales will drive up the cost of collections and will complicate the audit and potentially legal environment.

The Revenue Division recommends an approach based on all Portland gross receipts (retail, wholesale, manufacturing, and others), with a $1 million cap and continued deductions for food and medicine. Tables 5 and 6 display expected revenues under a universal GRT approach; Table 5 offers no BLT credit, while Table 6 includes a credit.

Table 5. Estimated Tax Revenue
Universal GRT, $1M Cap

Tax Rate	Low Revenue (millions)	High Revenue (millions)
0.50%	$87.9	$107.5
0.40%	$74.0	$90.5
0.30%	$58.5	$71.5
0.20%	$41.3	$50.5
0.10%	$22.4	$27.4

Table 5a. Taxpayer Statistics for Table 5, 822 Certain Payers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Maximum GRT
822	848	$1,000,000
Tax Rate	Minimum GRT	Estimated Median GRT
0.5%	$2,589	$40,272
0.4%	$2,071	$32,218
0.3%	$1,553	$24,163
0.2%	$1,035	$16,109
0.1%	$518	$8,054

If a GRT is considered, the Revenue Division recommends the Table 6 variation (universal, BLT credit and cap) at a rate to be determined by the City Council based on program funding requirements.

Table 6. Estimated Tax Revenue
Universal GRT
BLT Credit, $1M Cap

Tax Rate	Low Revenue (millions)	High Revenue (millions)
0.50%	$66.9	$81.7
0.40%	$52.2	$63.8
0.30%	$37.2	$45.5
0.20%	$23.0	$28.1
0.10%	$9.8	$12.0

Table 6a. Taxpayer Statistics for Table 6, 822 Certain Payers

Minimum GRT Taxpayers	Maximum GRT Taxpayers	Maximum GRT
822	848	$1,000,000
Tax Rate	Minimum GRT	Estimated Median GRT
0.5%	$0	$26,888
0.4%	$0	$19,290
0.3%	$0	$10,899
0.2%	$0	$4,127
0.1%	$0	$103

Administration and Budget

The Revenue Division will need 4.5 positions to administer the GRT in the as written scenarios (Tables 1-4). The work is primarily auditing the moderately complex schedules that will be required from all subject taxpayers, not just certain payers. Accounting for retail, service and internet sales in particular will need significant attention.

If the Revenue Division recommended universal GRT variation is adopted (Table 5 or 6), 2.5 FTE will suffice to administer the program, reflecting less audit work because there are fewer distinct income types to examine. A one-time start-up budget is estimated at $200,000. Ongoing expenses are estimated at $400,000 (universal GRT) to $600,000 (as written), making the cost of collection reasonable for all scenarios with gross tax receipts of about $10-12 million or more.[12]

Impact on Current BLT Receipts

We anticipate a reduction to BLT receipts as most taxpayers will take a Portland GRT deduction at the state and federal levels which will in turn flow back to Portland tax returns because Portland's returns begin with federal data. While we have not formally estimated the reduction, it is likely immaterial because apportionment dilutes the local impact of the deduction. If the Measure moves forward, the Revenue Division will analyze the impact in more detail.

Timing

The tax should be implemented on a tax year basis to consolidate filing requirements, allow for education and outreach, and ease administrative burden for taxpayers and the Revenue Division. If the Measure is passed by voters in 2018,[13] the Revenue Division recommends implementing the tax effective tax year 2019 with an initial filing and payment due in 2020. Because of the variables involved in estimating the tax, the Revenue Division also recommends setting a temporary rate for the first two years of the tax, with a true-up to the desired revenue target in the third year after the Revenue Division has actual tax receipts to model more accurate projections.[14]

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[12] About five percent as called for in the Measure.

[13] This is not meant to imply a ballot measure is required. City Council has the authority to expand the BLT to include a GRT, subject to City Attorney review.

[14] Final first year revenues will not be fully realized until well into the second tax year so the rate cannot be accurately adjusted until the third year.

Limitations to the Estimates

The Revenue Division does not possess the data necessary to directly estimate the Measure's revenue potential. The BLT is a net income tax and does not require taxpaying businesses to separately account for retail, wholesale, manufacturing, medicine, internet or food-related revenues because that data is not currently necessary for the computation of tax liability.

The Revenue Division does track voluntary, self-reported NAICS codes. NAICS codes allocate each tax reporting entity to a high-level description of its general business activity and were used to estimate potential revenues in conjunction with state and national economic and tax data. Forecasted revenues are presented as broad ranges because of these limitations.