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In this installment of Commerce Crossroads, Wilford examines Measure 118, a ballot measure that proposes a new corporate minimum tax rate in Oregon.

It is fairly rare that a tax ballot measure takes center stage in a presidential election year. Yet for Oregon voters, with no gubernatorial or Senate elections in a state that President Joe Biden (D) won by more than 15 points in 2020, the ballot measure known as Measure 118 may earn that rare distinction.

Measure 118, previously IP-17, would create a new corporate minimum tax rate on businesses with above a certain threshold of sales into Oregon. While minimum corporate tax rates are nothing new, the minimum tax created under Measure 118 would apply to gross receipts, not profits. Ironically, Oregon already has both a gross receipts tax for C corporations *and* a separate minimum corporate income tax; the minimum gross receipts tax rate created by Measure 118 would be in addition to those.

Even as things stand, Oregon's tax obligations for businesses are some of the highest in the nation. Measure 118 would launch the state into its own unique category for business unfriendliness.

The Specifics of Measure 118

Oregon already has a corporate minimum tax that is tiered based on income earned within the state. The largest possible minimum tax obligation under existing law is $100,000, applying to businesses with $100 million or more in Oregon-source income. S corporations face a minimum tax obligation of $150.[1]

Measure 118 would create a new corporate minimum tax obligation, applying as a second layer of minimum tax in addition to the existing one. The minimum tax under Measure 118 would be 3 percent of gross receipts, applying to businesses with $25 million or more in Oregon-source income.

As the minimum tax under Measure 118 is based on taxes paid under the traditional corporate income tax, it would apply in addition to Oregon's corporate activity tax (CAT). The CAT, which applies to businesses with more than $1 million in Oregon-source receipts, is applied as $250 plus 0.57 percent of Oregon-source gross receipts above $1 million. Businesses may subtract 35 percent of either labor costs or input costs from their CAT obligation.

The revenue collected from this new minimum tax would be used to fund a cash rebate to eligible Oregon residents. Everyone who resides in Oregon for more than 200 days in a year, including dependents, is eligible for the rebate. Dependents' rebates would be collected by their guardians.

[1] Or. Rev. Stat. section 317.090 (2024).

Measure 118 also includes provisions to ensure that recipients of the Oregon rebate do not miss out on means-tested benefits at the state or federal level as a result of the income received from the rebate. For benefits administered at the federal level, Measure 118 would require the state to first attempt to receive a waiver exempting rebate payments from federal means testing — should the federal government refuse, Oregon would then be required to reimburse residents for the lost federal benefits.

It remains an open question whether the rebate will constitute taxable income at the federal level. Though impossible to know for certain without IRS guidance, opponents of Measure 118 have argued that it is likely the payments would be federally taxable.[2] The closest analog to the rebate program under Measure 118 is the Alaska Permanent Fund dividend, which invests the royalties from the state's natural resources into a fund and returns a portion of the earnings to state residents. Generally, this payment is treated as a taxable dividend for federal tax purposes.

Projecting the size of the rebate has also been a matter of some contention. Advocates initially projected that the size of the rebate would be $750 per person but have since expanded this projection in line with revenue projections from a state legislative report to estimate that the rebate would be more than $1,600.[3] Attempts to include this estimate on the ballot measure's explanatory statement narrowly failed, and the explanatory statement will not include an official estimate of the amount of the rebate payment.[4]

The analysis performed by the state Department of Administrative Services estimated that Measure 118 would result in increased revenue of $16 billion through 2027, leaving between $12 billion and $13.6 billion for distribution through the rebate between 2025 and 2027. At the same time, the analysis estimates that Measure 118 would result in personal incomes dropping by 0.71 percent, employment decreasing by 0.99 percent, and prices increasing by 1.3 percent through 2030 *ceteris paribus*.[5]

Gross Receipts Taxes in the United States

Oregon already has relatively high corporate tax obligations, with the Tax Foundation ranking the state's corporate tax burden as the second highest in the nation.[6] Yet Measure 118 would take the state into a league of its own, in large part because of basing the new minimum tax rate on gross receipts, a type of tax that most U.S. states avoid — and for good reason. Gross receipts taxes make little to no allowance for profit margins and business costs, and are far more burdensome on low-margin businesses than high-margin ones.

Just seven states — including Oregon — impose state-level gross receipts taxes.[7] Even among these seven states, taxing *both* corporate income and gross receipts is rare — Delaware is the only other state besides Oregon to do so.

Generally, states that tax gross receipts do so at rates far lower than that proposed under Measure 118. The table below shows the maximum gross receipts tax rate that retailers or wholesalers can face in each state.

Maximum State-Level Gross Receipts Tax Rates For Retailers and Wholesalers

State	GRT Rate (Retail)	GRT Rate (Wholesale)
Delaware	0.7468%	0.3983%
Nevada	0.111%	0.101%
Ohio	0.26%	0.26%
Oregon	0.57%	0.57%
Tennessee	0.1875%	0.0375%
Texas	0.331%	0.331%
Washington	0.471%	0.484%

[2] Smart Growth Coalition, Comment Letter on Explanatory Statement for Initiative Petition (IP) 17 (July 31, 2024).

[3] Oregon Rebate, "Get the Facts."

[4] Sanjay Talwani, "No Rebate Estimate for Ore. Biz Tax Measure, Panel Says," Law360, Aug. 8, 2024.

[5] Patrick Heath, "Estimated State Financial Impact of IP 17," Oregon Department of Administrative Servies (July 12, 2024).

[6] Jared Walczak, Andrey Yushkov, and Katherine Loughead, "2024 State Business Tax Climate Index," Tax Foundation, Oct. 23, 2023.

[7] Joseph Johns, "Gross Receipts Taxes by State, 2024," Tax Foundation, May 14, 2024 (three other states allow localities to impose gross receipts taxes but do not do so at the state level).

Gross receipts tax rates often appear deceptively low, particularly when compared with corporate income taxes. However, comparing corporate income tax rates to gross receipts tax rates is difficult to do, as the comparable corporate income tax rate depends greatly on the affected business's profit margin.

A 3 percent gross receipts tax rate is more than high enough for a business with a fairly average 7 percent or 8 percent profit margin, equivalent to a corporate income tax rate of between 37.5 percent to 42.9 percent. Minnesota has the highest marginal corporate income tax rate in the nation at 9.8 percent.[8] A business would have to run a profit of more than 30 percent for this gross-receipts-based corporate minimum tax not to function as the highest corporate tax rate in the nation. And that's not even considering the fact that Oregon *also* has a separate 0.57 percent gross receipts tax.

But retailers tend to have lower profit margins. Grocery stores, for example, tend to operate at around 1 percent to 2 percent profit margins.[9] At that rate, sellers would actively lose money operating in Oregon above the $25 million gross receipts tax threshold.

Should Oregonians vote for Measure 118, the $25 million threshold could open the tax up to constitutional challenges. Oregon Rebate, the group advocating for voters to approve Measure 118, explicitly brags that "all but a handful" of the businesses that would face a tax increase under Measure 118 "are based outside of Oregon."[10] Should Measure 118 become law, it would face well-founded challenges alleging that the tax is intentionally structured to export tax burdens while importing revenue.

Who Supports Measure 118?

While ultimately a question for voters, Measure 118 has been widely panned across the political spectrum. While opposition by the state's elected Republicans and a coalition of business groups is hardly surprising, Measure 118 has received a nearly identical reaction from elected Democrats.

All the top Democrats have lined up to declare their opposition to Measure 118, including Gov. Tina Kotek (D) and top Democrats in both branches of the state Legislature.[11] Tax Fairness Oregon, an advocacy group that generally supports higher taxes on corporations, called Measure 118 "a hot mess."[12] Democratic leaders have expressed concern that while Measure 118 would increase overall state revenue, it would reduce revenue available to fund other state programs, as well as about its broader economic impact.[13]

Lacking institutional support within Oregon, support for the campaign has largely come from out of state. While Oregon Rebate claims that the measure came about from a 2018 coffee shop meeting between "everyday Oregonians" in Eugene, it has received most of its funding from a single Californian. More than two-thirds of the cash and in-kind contributions Oregon Rebate reported came from Jones Holding LLC, a California-based business owned by Los Angeles resident Josh Jones.[14]

Conclusion

While the opposition of state Democrats significantly dims Measure 118's prospects, Oregonians will still have the final say this November. They should be aware of just how radical and unprecedented a gross receipts tax of this scale would be.

If voters approve Measure 118, it will be interesting to see what the future of the rebate will be with what is sure to be a flurry of bipartisan legislative opposition and other legal challenges. Whether the tax-and-rebate idea would become a uniquely Oregonian peculiarity or catch on in other states would become the all-important question.

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[8] Loughead, "State Corporate Income Tax Rates and Brackets, 2024," Tax Foundation, Jan. 23, 2024.

[9] Aswath Damodaran, "Margins by Sector (US)," New York University (Jan. 2024).

[10] Oregon Rebate, *supra* note 3.

[11] Nigel Jaquiss, "Legislative Leaders and Key Labor Union Oppose Measure 118," *Willamette Week*, Aug. 13, 2024.

[12] Tax Fairness Oregon, "Measure 118 Is a Hot Mess!" (Aug. 7, 2024).

[13] Julia Shumway, "Oregon Legislative Democrats Join Governor, Republicans in Opposing Rebate Ballot Measure," Oregon Capital Chronicle, Aug. 13, 2024.

[14] Victoria Antram, "Two Initiatives Qualify for the Ballot in Oregon Proposing Increased Corporate Taxes and Cannabis Worker Labor Policy," Ballotpedia, Aug. 5, 2024.

Yet, should it fail, it will be a remarkable testament to just how clear the economic harm from the expanded gross receipts tax would be. At a time when increasing taxes on corporations is a matter of Democratic orthodoxy, the unanimous opposition from Oregon's Democratic leadership to a corporate tax increase is notable and a barometer of just how far an island this would put Oregon on in terms of its business tax policies.

Oregon already has an unfortunate reputation as an uncompetitive business tax climate. Measure 118 would make Oregon the poster child for states that businesses should avoid. ■