

Power to Majority Restored
Court ruling explains that simple majority of legislature
suffices to reform or repeal a tax expenditure

The Oregon legislature now has significantly more room to maneuver in terms of increasing funding for vital public services as a result of a 2015 Oregon Supreme Court case, which has changed the analysis of the lawyers for the Legislative Assembly. The ruling in *City of Seattle v. Department of Revenue* makes clear that when it comes to reforming or repealing tax expenditures — deductions, credits, subtractions, exemptions from taxes — a vote by a simple majority of the legislature will usually suffice.¹

Legislative Council used to consider repeal of tax expenditures “bills for raising revenue”

In 1996, Oregon voters approved a constitutional amendment requiring a three-fifths vote of both houses of the legislature to enact “bills for raising revenue.” The state Constitution in Article IV, Section 18, already required bills for raising revenue to originate in the House.

Following that vote, the legislature’s lawyers in the Office of the Legislative Counsel (LC) instructed lawmakers that repealing or reforming tax expenditures in a way that increased revenue constituted “bills for raising revenue,” and thus required a three-fifths majority.²

The Oregon Center for Public Policy has long argued that bills eliminating wasteful and ineffective tax expenditures should not be considered bills for raising revenue requiring a three-fifths vote. We based that conclusion, in part, on a 1978 official opinion by the Oregon Attorney General interpreting the term “bills for raising revenue,” which concluded that “the mere existence of a non-revenue raising purpose would take the bill out of the Oregon Constitution restriction on bills for revenue raising.”³ Until recently, LC has argued that the 1978 opinion should not be followed.

***City of Seattle* explains that repeal of tax expenditures are not “bills for raising revenue”**

City of Seattle changed LC’s analysis to be more in line with the Center’s and with the Attorney General. In the *City of Seattle* case, plaintiffs challenged the Oregon legislature’s repeal of a property tax exemption. Because the bill had originated in the Oregon Senate, plaintiffs argued that it violated the constitutional requirement that “bills for raising revenue shall originate in the House of Representatives.” The Oregon Supreme Court rejected the argument, finding that the legislation was not a bill for raising revenue.

The holding — the legal principle established by the case — of *City of Seattle* can be summarized as follows:

- The fact that a bill will bring additional money into the treasury is not enough to make it a bill for raising revenue. This is true even if increased revenue was one of goals of the legislature in enacting the bill. The relevant question is “whether the bill possesses the essential features of a bill levying a tax.”

- A bill with the essential features of levying a tax is one that “directly” levies a tax, as opposed to regulating how a tax is applied. Stated differently, bills “to secure what may be deemed a just or expedient basis for the levying of a tax” are not bills for raising revenue. As noted by LC, setting the “rate” is considered levying a tax; setting the base that the rate is applied to is not.⁴
- Because removing a tax expenditure generally is not a bill that actually levies a tax, but rather one that regulates how a tax is applied or credited, it is not a bill to raise revenue.

At hearings of House and Senate interim revenue committees in May 2016, Legislative Counsel testified that *City of Seattle* changes its view of what constitutes a bill for raising revenue.⁵ LC explained that taxes are composed of tax rates and the tax base (who pays the tax). LC testified that they understand *City of Seattle* to say that a bill that changes the tax rate (or levies a new tax) requires a three-fifths majority, while a bill that changes the tax base does not.

Going forward there are bound to be proposals that fall into grey areas on the question of whether a supermajority is required. Still, *City of Seattle* has brought a great deal of welcomed clarity on a key aspect of tax policy. Now, a minority of the legislature can no longer block efforts to end wasteful and ineffective tax expenditures. A simple majority can reform or eliminate many, if not all, tax expenditures.

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¹ *City of Seattle v. Department of Revenue*, 357 Or 718 (2015).

² As noted above, the phrase “bills for raising revenue” appears twice in the Oregon Constitution. The courts and Legislative Counsel have made it clear that the term has the same meaning and should be interpreted the same in both instances.

³ 38 Op. Att’y Gen. 2143 (1978).

⁴ See, e.g., the recording of the interim House Committee on Revenue meeting on May 23, 2016. http://oregon.granicus.com/MediaPlayer.php?clip_id=21831.

⁵ Id.