### IN THE SUPREME COURT OF THE STATE OF OREGON

AAA Oregon/Idaho Auto Source, LLC, AAA Oregon/Idaho, and Oregon Trucking Associations, Inc.,

Supreme Court Case No. S\_\_\_\_\_

Petitioners,

V.

STATE OF OREGON, by and through the Department of Revenue

Respondent.

PETITION FOR REVIEW
UNDER
SECTION 112, CHAPTER 750, OREGON LAWS 2017

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Petitioners seek review under section 112, chapter 750, Oregon Laws 2017 ("section 112"), App- 6, to determine whether section 90, chapter 750, Oregon Laws 2017 ("section 90"), App-1, imposes a tax or excise levied on the ownership, operation or use of motor vehicles subject to the provisions of Article IX, section 3a, of the Oregon Constitution.

# 1. This Court Has Jurisdiction Over this Proceeding

Section 112 (2) confers original jurisdiction on this Court to determine whether section 90 imposes a tax or excise levied on the ownership, operation or use of motor vehicles subject to the provisions of Article IX, section 3a.

# 2. This Petition Is Timely

Section 112(3)(a) provides that the petition must be filed "within 30 days after the effective date of [chapter 750, Oregon Laws 2017]." Under Article IV, section 28 of the Oregon Constitution, chapter 750, Oregon Laws 2017, became effective October 6, 2017. Petitioners filed this Petition November 3, 2017, within 30 days of October 6, 2017.

# 3. Petitioners Are Interested In, Affected, or Aggrieved by Section 90

#### a. The Nature of the Tax

Section 90 (1) imposes a tax on "vehicle dealer[s]" for the "privilege" of selling new motor vehicles at retail. The privilege tax is measured in an amount equal to .5 (one-half) percent of the "retail sales price" of a vehicle. Section 90 (2). Although the Legislative Assembly imposes the tax on the dealer, the

Legislative Assembly authorizes the dealer to "collect the amount of the privilege tax \* \* \* from the purchaser." Section 90 (3)(a).

Section 96 (2)(a), chapter 750, Oregon Laws 2017 ("Section 96"), App-4, uses the revenues from the tax for other than the purposes to which the people in Article IX, section 3a have dedicated revenues from a "tax or excise levied" on the ownership, operation or use of motor vehicles." Instead of going to improve or maintain "public highways," revenues from the tax subsidize individuals' purchases of zero-emission vehicles and projects for non-highway transportation, such as air and rail. See ORS 367.080 (describing permissible purposes of Connect Oregon Fund). This non-highway use of revenues from the tax is temporary; beginning in 2024, revenues from the tax go to the Fund. Section 96a, chapter 750, Oregon Laws 2017 (App-4).

If this Court "determines that section 90 \* \* \* imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a," then "section 90 \* \* \* is repealed[.]" 2017 Or Laws, ch 750, §112 (8). The repeal means that, if the taxes cannot got for non-highway uses, the taxes will also not go to highway uses.

Section 112 (8) also provides that revenues from the tax the State has not expended as of the date of this Court's determination go to the Fund. A negative implication of the provision is the State may retain moneys unconstitutionally expended before this Court makes its determination. The grant of jurisdiction to this Court by section 112 (2), however, appears to be limited to making a determination and not to extend to devising a remedy to support the determination, such as directing the State to replace unconstitutionally expended moneys.

## b. The Standard for Standing

The Legislative Assembly may grant standing to sue to address a state law. *Couey v. Atkins*, 357 Or 460, 520 (2015) (for "public actions or cases that involve matters of public interest"); *Kellas v. Department of Corrections*, 341 Or 471, 484 (2006) ("legislature has empowered citizens to initiate a judicial proceeding to vindicate the public's interest in requiring the government to respect the limits of its authority under law").

The Legislative Assembly has exercised that authority here. Section 112 (3)(a) authorizes "[a]ny person interested in or affected or aggrieved by section 90 \* \* \* [to] petition [this Court] for judicial review" to determine whether section 90 "imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a."

The standard for standing to sue—"interested in or affected or aggrieved"—is the same standard the Legislative Assembly employed in 1991 when conferring original jurisdiction on this Court to determine whether an emission fee "impose[d] a tax or excise levied on the ownership, operation or use of a motor vehicle that is subject to the provisions of section 3a, Article IX of the Oregon Constitution[,]" section 14h, chapter 752, Oregon Laws 1991, and whether an underground storage tank assessment "impose[d] a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil, natural gas or motor vehicle fuel \* \* \*

that is subject to the provisions of \* \* \* section 3a, Article IX of the Oregon Constitution." 1991 Or Laws, ch 863, §20.

In Automobile Club of Oregon v. State, 314 Or 479, 481 n 4, this Court found that Petitioner here, AAA Oregon/Idaho ("Oregon AAA"), was, under the 1991 grants of standing, "affected, because its members pay the gasoline storage assessment indirectly and pay the emission fee directly, and because [Oregon AAA's members] are users of the highways of this state, [Oregon AAA was aggrieved by the dedication of proceeds from the assessment and fee to purposes other than those permitted for the state's Highway Fund."

This Court also found a towing company was "affected" within the meaning of 1991 grants of standing because the towing company was "the owner of underground storage tanks from which motor vehicle fuels are sold to the public, because it owns vehicles subject to the emission fee, and because the assessments and fees will not be dedicated to the Highway Fund." See also Larson v. Heintz, Const. Co., 219 Or 25, 55, 345 P2d 835 (1959) (assuming "travelers on the highway[s]" are "beneficiar[ies]" of construction contracts paid for by State Highway Fund ("Fund")).

From this authority, persons with standing to sue under section 112 are, at a minimum, persons who:

<sup>&</sup>lt;sup>2</sup> This Court did not say the towing company was also "aggrieved" because the use of assessments and fees would not be dedicated to the Highway Fund, but, if Oregon AAA was aggrieved because of the allegedly unconstitutional use of revenues, then the towing company should also have been aggrieved.

- Are subject to the tax on motor vehicles, *i.e.* a vehicle dealer;
- Pay the tax indirectly, *i.e.* a purchaser of a taxed vehicle; or
- Use the state's highways, *i.e.* a beneficiary of the Fund to which the tax revenues "will not be dedicated." <sup>3</sup>

Under the standard, Petitioners are "interested, affected or aggrieved."

# (1) AAA Oregon/Idaho Auto Source, LLC

Petitioner AAA Oregon/Idaho Auto Source, LLC ("Auto Source") is a vehicle dealer subject to the tax imposed by section 90. The tax adversely affects Auto Source by raising the price of (or lowering the profits on) vehicles Auto Source sells. This Court's determination will have a "concrete effect" on Auto Source because, a determination that the tax is levied on the ownership, operation or use of motor vehicles will result in the repeal of the tax and elimination of Auto Source's obligation to pay the tax. *See Morgan v. Sisters* 

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In Automobile Club of Oregon, this Court also said Oregon AAA had standing to sue as a party "interested in or affected or aggrieved" based upon the effect of the challenged assessments on Oregon AAA's members. At least one member of this Court, Justice (then Judge) Landau, has criticized the grant of standing to sue to an organization based on effects on the organization's members. Oregon Taxpayers United PAC v. Keisling, 143 Or App 537, 543, 924 P2d 853 (1996). To avoid litigation over issues unnecessary to the ultimate disposition of the proceeding, the organizational Petitioners, Oregon AAA and Oregon Trucking Associations, Inc. ("OTA"), do not assert standing to sue based on the attributes of their members.

In any event, according to *Macpherson v. DAS*, 340 Or 117, 123–24, 130 P3d 308 (2006), "[t]o establish standing under ORS 28.020 in a case in which there are multiple plaintiffs, only one plaintiff must show 'some injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or validity of a law. *League of Oregon Cities v. State of Oregon*, 334 Or 645, 658, 56 P3d 892 (2002)." Because the standard for standing to sue under section 112 appears to be no less exacting than the standard under ORS 28.020 ("[a]ny person interested"), so long as one Petitioner has standing to sue, the lack of another Petitioner's standing should not affect the ability of that Petitioner to participate in the proceeding.

School Dist. No. 6, 353 Or 189, 200, 301 P3d 419 (2013).

# (2) AAA Oregon/Idaho

Oregon AAA was founded in 1905 to, among other purposes, advocate for the interests of the motorists who use the State's highways; that role remains an essential part of Oregon AAA's mission today. Oregon AAA carried out its mission by serving as a leading proponent of the people's adoption of the Constitutional highway-dedication provision that is at issue in this proceeding. This role as advocate for the Fund makes Oregon AAA interested in the lawful use of the revenues generated from the tax. *Bicycle Transportation Alliance*, *Inc. v. City of Portland*, 133 Or App 422, 891 P2d 692 (1995) (organization that "advocate[d] for increased bicycle access, use and safety" permitted to challenge government's use of Fund moneys).

Oregon AAA also purchases vehicles that are subject to and carry the tax, meaning that, like the affected motorists in *Automobile Club of Oregon*, Oregon AAA "pay[s the challenged] assessment indirectly." Oregon AAA is, therefore, "affected" by the tax imposed by section 90.

Finally, the decision to spend the vehicle tax revenues for non-highway purposes also adversely affects Oregon AAA's bottom line. Like the towing company in *Automobile Club of Oregon*, as part of its business, Oregon AAA provides roadside assistance. There is a direct correlation between, on the one hand, highway quality and congestion and, on the other hand, the quantity of

motor vehicle accidents and motor vehicle maintenance and repair. The more poorly a highway is designed and maintained, and the smaller the highway is in relation to the number of vehicles that travel the highway, the higher the number of vehicle accidents and the more maintenance and repair vehicles require.

The State lacks the resources to maintain even the current state of the State's highways. Even with the funding provided for state highways in chapter 750, Oregon Laws 2017, the Department of Transportation ("ODOT") reports that "Oregon continues to face ever-growing traffic congestion in the Portland Metro region and struggles to keep pace with maintenance of the transportation system as revenues decline over time." Legislative Summary 2017, p. 7 (ODOT 2017);

http://www.oregon.gov/ODOT/About/GR/2017LegislativeSummary.pdf.

The more poorly designed and maintained the State's highways, the more accidents and vehicle problems Oregon AAA's members experience. The more accidents and problems Oregon AAA's members experience, the more roadside assistance members require. Oregon AAA's compensation for persons who provide roadside assistance is based on the number of times the persons provide roadside assistance. Oregon AAA, therefore, spends more money to provide roadside assistance to members than if the vehicle tax revenues supported highway design, construction, and maintenance instead of air and marine

projects and purchases of zero-emission vehicles.

# (3) Oregon Trucking Associations, Inc.

Petitioner OTA was founded in 1939, the same year the Legislative

Assembly designated the Fund as a "trust fund." 1939 Or Laws, ch 529, §9.

Like Oregon AAA, OTA was founded to, among other reasons, advocate for the interests of the motorists—specifically, truckers—who use the State's highways, and that role remains an essential part of OTA's mission today. An official role of OTA is to advocate for the policy that "[r]oadway user taxes and fees should continue to be dedicated to our state's roadway system as required by Article IX, Section 3a of Oregon's Constitution." Because OTA is a membership organization, OTA's revenues depend on OTA's success in fulfilling its mission to protect the Fund.

Like Oregon AAA, OTA also carried out its mission by serving as a leading proponent of the people's adoption of the Constitutional highway-dedication provision that is at issue in this proceeding. This formal role as advocate for the Fund makes OTA, like Oregon AAA, interested in the lawful use of the revenues generated from the tax.

# 4. Grounds Upon Which Petition is Based

Section 112(3)(b) requires a petitioner to "state \* \* \* the grounds upon which the petition is based." Petitioners base their Petition on the grounds that follow.

The question this proceeding poses is whether the tax section 90 imposes is a tax or excise levied on the "ownership, operation or use of motor vehicles" under Article IX, section 3a. The answer to the question is yes.

## a. The History of the State Highway Fund

Beginning in 1917, Oregon law has limited the use of the Fund to state highways. Or Laws 1917, ch 237, §10 ("No part of the state highway fund shall be expended other than upon state highways").

In 1939, the Legislative Assembly went further to provide that the Fund "shall be deemed and held as a trust fund, separate and distinct from the General Fund," to be used only as authorized by law. 1939 Or Laws, ch 529, \$9; codified at ORS 366.505(2).

Following an Attorney General opinion that supported legislative authority to change the law that restricted revenues from motor vehicles and motor vehicle fuels to highways uses, 21 Op Atty Gen 481, 482 (1941), the people amended the Constitution to add the provision that is now, after amendment, Article IX, section 3a (1)(b), which provides that "revenue" from "[a]ny tax or excise levied on the ownership, operation or use of motor vehicles" "shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state[.]" 1941 SJR 11, adopted

November 3, 1942.<sup>4</sup>

The people have amended the highway fund provision three times, each time changing parts of the provision other than the nature of the taxes dedicated to the Fund. In 1980, the people repealed Article IX, section 3 and replaced the section with section 3a, the sole substantive change in which being the removal of authority to use the Fund's revenues to support "police, parks, scenic and historic places[.]" Explanatory Statement, Ballot Measure 1, Primary Voters' Pamphlet, p. 4 (May 20, 1980). Under the 1980 change, the part of Article IX, section 3a that is at issue in this proceeding—subsection (1)(b)—read, with immaterial stylistic changes, the same as when the people adopted the original section, *former* Article IX, section 3, in 1942.

In 1999, the people amended section 3a to add subsection (3), which commands the Legislative Assembly to apportion the amount of taxes paid by light vehicles and heavy vehicles so the amounts reflected "fair and proportionate \* \* \* costs" of the vehicles' uses of and effects on the highways.

1999 Ballot Measure 76. In 2004, the people amended section 3a (2)(c) to remove the dedication for revenues from levies on "mobile homes" so the

<sup>&</sup>lt;sup>4</sup> Under today's jurisprudence, the people may not have needed to amend the Constitution to require the state government to comply with the Legislative Assembly's designation of a fund as a "trust fund" dedicated to specific uses. In *Eckles v. State of Oregon*, 306 Or 380, 402–03, 760 P2d 846 (1988), this Court held that the State violated the Contracts Clause of the Constitution, Article I, section 21, by using moneys from the State Industrial Accident Fund for other than workers' compensation purposes when the Legislative Assembly had previously designated the fund as "a trust fund exclusively for the uses and purposes declared in ORS 656.001 to 656.794[.]"

revenues could be used for, among other purposes, enforcement of the Building Code. 2004 Ballot Measure 32.

In the three amendments, there are no substantive changes to the language at issue: "tax or excise levied on the ownership, operation or use of motor vehicles." In the history of the adoption of the three amendments, there is no discussion of an intent to change the meaning of "tax or excise levied on the ownership, operation or use of motor vehicles." Consequently, the text at issue reads and means as adopted in 1942. *State v. McGinnis*, 56 Or 163, 165, 108 P 132 (1910) (restated wording in amendatory Act considered part of original law, whereas only new additions are regarded as a new enactment).

# b. The Meaning of Taxes on "Ownership, Operation or Use"

Petitioners acknowledge that Attorney General Thornton opined that proposed laws substantially similar to the tax imposed by section 90 were not taxes or excises levied on the ownership, operation or use of motor vehicles. 28 Op Atty Gen 20, 20 (1957) ("tax on retailers' gross receipts from the sale of motor vehicles" was not tax on ownership, operation or use of motor vehicles); 34 Op Atty Gen 424, 426 (1969) (same).

Attorney General Thornton reached the wrong conclusion because

Attorney General Thornton used an incomplete methodology to determine the meaning of tax on "ownership, operation or use." Use of the correct methodology leads to the contrary conclusion.

Although Attorney General Thornton noted that a "plain reading" of former Article IX, section 3 made it "hard to determine" the scope of the taxes dedicated to the Fund, 28 Op Atty Gen 192, 193 (1957), Attorney General Thornton interpreted tax on "ownership, operation or use" based solely on the text and case law and did not examine the history of former Article IX, section 3. The omission was critical because, for former Article IX, section 3, which reads the same in material respects as Article IX, section 3a, the adoption history shows the people had a broader view of the concept of tax on "ownership, operation or use" than Attorney General Thornton did.

In *Oregon Telecommunications Ass'n v. Oregon Dept. of Transp.*, 341 Or 418, 425–26, 144 P3d 935 (2006), this Court explained the methodology for interpreting a "constitutional provision adopted through the referral process":

"As part of our initial analysis under that methodology, we consider the text of the provision that the voters adopted and the relevant case law interpreting that provision. If the intent of the voters is not clear after that inquiry, we then will examine the history of the provision. The history of the provision includes 'sources of information that were available to the voters at the time the measure was adopted and that disclose the public's understanding of the measure." (Citations omitted)

In *Oregon Telecommunications Ass'n*, this Court found the part of Article IX, section 3a that prescribes the uses of Fund moneys—"construction, reconstruction, improvement, repair, [and] maintenance \* \* \* of public highways"—so clearly covered relocating utility facilities in highway rights of way that no reference to the history of adoption was needed to interpret the

language. 341 Or at 432. The same clarity is not the case for whether the phrase tax "on the ownership, operation or use of motor vehicles" covers a tax on vehicle dealers measured by the sales price and that dealers may collect from purchasers.<sup>5</sup> The lack of textual clarity is particularly true when following the requirement to effectuate the Fund's trust status by construing tax "on the ownership, operation or use of motor vehicles" to favor the beneficiaries of the Fund and not the government that wants to spend revenues for non-highway purposes. See Rogers v. Lane County, 307 Or 534, 545, 771 P2d 254 (1989) (government's authority to spend Fund moneys should be "narrowly construed").

Attorney General Thornton based his conclusion that a tax on a sale of a motor vehicle could not be a tax on ownership, operation or use based on the following logic:

"It cannot be denied that the right of a retailer to transfer title to property is an incident of ownership of such property. Consequently, the sale of an automobile, if taxed, is essentially a tax on a vital incident of ownership. Though this is undoubtedly true, it is nevertheless our opinion that the word 'ownership' was intended in the sense normally used in relation to ad valorem taxes where the source of tax liability is the 'ownership' of property with all its incidents."

28 Op Atty Gen at 21.

<sup>&</sup>lt;sup>5</sup> Article IX, section 3a (as the continuation of *former* Article IX, section 3) is also the kind of provision for which this Court should always "examine the history of the provision." As explained below, the express purpose of *former* Article IX, section 3 (which continues through to Article IX, section 3a) was to constitutionalize statutory concepts as the concepts existed at the time of adoption of *former* Article IX, section 3. Thus, the meaning of tax "on the

Attorney General Thornton did not explain why the people intended for the term tax on "ownership" to mean a tax on "all \* \* \* incidents" of ownership and not some. To support the opinion, Attorney General Thornton cited to Western Lithograph Co. v. State Bd. of Equalization, 11 Cal 2d 156, 78 P2d 731, 736 (1938), for the proposition that a retail sales tax is "neither a tax on the transfer of property nor on its ownership." 28 Op Atty Gen at 21. In fact, the California Supreme Court said nothing of the kind. The question the California Supreme Court addressed in Western Lithograph was whether California's retail gross receipts tax was a tax on the seller (in which case a national bank had to pay the tax) or was a tax on the purchaser (in which case federal law exempted the national bank from the tax): "if the tax imposed pursuant to the provisions of the State Retail Sales Tax Act is a tax on the consumer or purchaser of the goods sold, then the petitioner is entitled to the relief sought." 11 Cal 2d at 159. The case did not involve a provision like tax "on the ownership, operation or use of motor vehicles." Thus, the out-of-state opinion could not have formed any part of the people understanding of the terms.

Attorney General Thornton also relied on this Court's opinion in *Wittenberg v. Mutton*, 203 Or 438, 280 P2d 359 (1955), for the proposition that an "excise tax on the privilege of conducting business [is not] a tax based on 'ownership, operation or use' of particular items of property." 34 Op Atty Gen

ownership, operation or use of motor vehicles" necessarily flows from the then statutory assessments "on the ownership, operation or use of motor vehicles."

at 426. The privilege tax at issue in Wittenberg was not a tax based "on the ownership, operation or use of motor vehicles," but Wittenberg did not say and does not stand for the proposition that every tax for the privilege of conducting a business is not based "on the ownership, operation or use of motor vehicles." In Wittenberg, a city imposed a license tax on all businesses doing business within the city. The city charged a lower tax to businesses with physical locations within the city than to business without physical locations in the city based on the not unreasonable assumption that business located within the city contributed property taxes to city coffers and business located outside the city did not. 203 Or at 441–42. A business located outside the city and that used a motor vehicle to conduct its business challenged the tax, contending that, because the business used a motor vehicle to conduct business, the tax was necessarily "on the ownership, operation or use of motor vehicles." 203 Or at 442. Not surprisingly, this Court disagreed with the challengers. The tax applied to any business regardless of whether the business used any form of transportation at all. As a result, the tax could not "be construed to cover a tax upon a business sought to be carried on from a motor vehicle." 203 Or at 445. From Wittenberg, therefore, one could assume that a tax that applied to businesses with motor vehicles and businesses without motor vehicles was not a tax "on the ownership, operation or use of motor vehicles." One could not assume, as Attorney General Thornton did, that a tax for the privilege of

conducting business was not "on the ownership, operation or use of motor vehicles" when, as here, the tax is specifically targeted at dealers of motor vehicles and may be collected from the motorist who purchases the vehicle.

There are, therefore, no reasons why the people would have intended for the term tax on "ownership" to mean a tax on "all \* \* \* incidents" of ownership and not some. At the time of adoption of *former* Article IX, section 3, there were good reasons to believe the people understood (and, as a consequence, intended for) the concept of ownership to encompass any—not all—incidents of ownership. At the time of the adoption of *former* Article IX, section 3, this Court had made repeated statements about the concept of ownership constituting multiple segregable rights or incidents, principal among which were the rights to sell and to use. E.g., Lewis v. City of Portland, 25 Or 133, 158, 35 P 256 (1893) ("the right to regulate the use \* \* \* or to dispose of"); Friswold v. U.S. Nat. Bank of La Grande, 122 Or 246, 251, 25 P 818 (1927) ("One of the principal incidents of ownership of property is the right of disposition"). Ownership was a prerequisite to the ability to sell. In fact, it was axiomatic even then that "[a] man cannot sell \* \* \* what he does not own." United States Nat'l Bank v. Miller, 122 Or 285, 291, 258 P 205 (1927). Under these circumstances, it is not only plausible, but even likely, that the people understood a tax on the sale of property to be a tax on "ownership, operation or use" of the property within the meaning of *former* Article IX, section 3.

# c. A Tax on the Sale of Motor Vehicles is a Tax on "Ownership, Operation or Use" of Motor Vehicles

The key point about the adoption of *former* Article IX, section 3, is that the people added the section to the Constitution to protect highway funding laws from legislative encroachment. The sole goal of the provision was to lock into place the concepts existing at the time of adoption. The legislative argument in favor of the measure that became *former* Article IX, section 3 stated:

"The purpose of the amendment is to reassert and to write into the constitution of this state, the principle underlying the gasoline tax and the other taxes on motor vehicle users which is, that the revenues received from these taxes and imposed ONLY on such users should be devoted solely to highway purposes as broadly conceived and defined in our present laws. Put differently, the amendment raises this question for the people of Oregon to answer: 'Shall the constitution be amended to guarantee that the gasoline diesel fuel, ton mile and other taxes paid only by motor vehicle users be used for highways, roads and streets, and for the other closely related purposes now provided by law.'

"There is nothing novel or revolutionary in such a proposal. It makes no change in the state's present fiscal policies. \* \* \* It does not impair the authority of the legislature over the rate or the levy of these taxes. It does provide that the state keep faith with the users of its highways who gladly pay and have paid these taxes because of their unquestioning reliance and full expectation that the proceeds would be applied to the highway purposes to which they now are dedicated. It does make certain that the present policy of this state to use highway user funds for highway purposes will be continued."

Official Voters' Pamphlet, p. 11 (Nov. 3, 1942) (capitalization in original).

The argument contains two related statements essential to understanding

the people's understanding of a tax "on the ownership, operation or use of motor vehicles." First, *former* Article IX, section 3 was to "write into the constitution the principle underlying the \* \* \* taxes on motor vehicle users which is, [*sic*] the revenues received from these taxes and imposed ONLY on such users should be devoted solely to highway purposes[.]"

Second, the proposal "does not impair the authority of the legislature over the rate or the levy of these [highway-related] taxes." Taken together, these statements mean the Legislative Assembly could decide whether to assess taxes for highway purposes and in what amount, but in doing so the taxes had to be consistent with then current "taxes on motor vehicle users." For purposes of this proceeding, the important point is the negative implication: the Legislative Assembly could not assess a tax that was conceptually like the then current "taxes on motor vehicle users" and use the proceeds for non-highway purposes. But that is exactly what the Legislative Assembly did in sections 90 and 96.

The "taxes on motor vehicle users" in law at the time of the adoption of *former* Article IX, section 3, were sufficiently like the tax imposed by section 90 for the tax imposed by section 90 to be of the kind the people intended to support the Fund. To become "entitled," *i.e.*, to have the privilege, to sell motor vehicles, a dealer had to pay a sum to the State, OCLA §115-102 (1940),

amended by 1941 Or Laws, ch 122, §1, and ch 378, §1<sup>6</sup> and the revenues from the payments went to the Fund: "After payment of expenses of administering this [A]ct, as provided therein, the moneys remaining shall \* \* \* be transferred to the state highway fund for such purposes as are provided by law." OCLA §115-135 (1940). Thus, at the time the people adopted former Article IX, section 3, they understood an assessment exacted from a vehicle dealer for the privilege of selling vehicles was one of the "taxes on motor vehicle users" former Article IX, section 3 dedicated to highway purposes. To be sure, the assessment imposed on dealers in OCLA §115-102 was denominated a "fee" and accompanied a "registration" with the State, but as this Court has noted with respect to Article IX, section 3a, "[r]egistration is intrinsically and necessarily a requisite of the 'ownership, operation or use of motor vehicles[,]" Automobile Club of Oregon, 318 Or at 493, and the label affixed to an assessment does not matter: "'fee,' 'excise,' 'tithe,' 'assessment,' or some other term." 318 Or at 487. The important aspect of the pre-adoption dealer registration fee is the similarity of the concept to the tax imposed by section 90: an assessment paid as a consequence of selling motor vehicles.

The foci of the existing assessments covered by *former* Article IX, section 3 (and, thus, Article IX, section 3a) were the (1) use of revenues from

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<sup>&</sup>lt;sup>6</sup> By virtue of becoming entitled, a dealer also obtained permission to "operate" the dealer's vehicles on the State's roadways. OCLA §115-102. A comparable authority exists today in ORS 822.040.

the assessment for highway purposes, and (2) relationship of the assessment to motor vehicles and not to other goods or services. The Legislative Argument uses the shorthand "highway taxes" synonymously with "taxes on motor vehicle users" to refer to covered assessments other than assessments on motor fuel. Official Voters' Pamphlet, p. 11 (Nov. 3, 1942). Thus, use of revenues identified covered assessments. Dedication of revenues to the Fund established that (non-motor fuel) revenues came from "highway taxes" or "taxes on motor vehicle users." The fee required of dealers at the time of adoption of *former* Article IX, section 3, was just such a tax. The tax imposed on dealers by section 90 is, therefore, just such a tax.

The taxes *former* Article IX, section 3, covered were assessments "imposed ONLY on such [*i.e.*, motor vehicle] users," with the emphasis being the targeting of the assessment to a status or activity involving a motor vehicle. The covered taxes were contrasted with taxes that did not exist *because* of status or activity specifically involving motor vehicles: "real and personal property taxes, income taxes, gift taxes, water taxes, [and] sales taxes[.]" Official Voters' Pamphlet, p. 11 (Nov. 3, 1942). This discussion shows that, to the people, the nature of the tax did not matter. The attribute of an assessment that brought the assessment within *former* Article IX, section 3, was the application to a motor vehicle to the exclusion of other kinds of property or conduct. The fee required of dealers at the time of adoption of *former* Article

IX, section 3, was just such a tax. The tax imposed on dealers by section 90 is, therefore, just such a tax.

Finally, as Justice Lent once noted, "common sense often comes to the rescue" to help interpret a measure. *Rogers v. Roberts*, 300 Or 687, 717 P2d 620 (1986) (Lent, J., concurring). Here, common sense suggests voters understood that an assessment imposed on a seller of motor vehicles would be passed on to the motorist who purchased the vehicles. *See McCann v. Rosenblum*, 355 Or 256, 259, 323 P3d 955 (2014) ("the wholesaler could pass some or all of those fees on to the retailer who, in turn, could pass them on to the consumer"). Especially given the emphatic nature of the argument in the 1942 Voters' Pamphlet supporting restriction of motorists' payments to highway purposes, common sense further suggests that the motorists who would pay the dealer's passed-on assessment would intend for the assessment to support the Fund and not government services generally.

Any other conclusion would permit the Legislative Assembly to use semantics to avoid a constitutional obligation—which is the case with section 90 when viewed in comparison to the companion "use" tax imposed on vehicle purchasers by section 91, chapter 750, Oregon Laws 2017 ("section 91"). App-3. Subsections (1) and (2) of section 91 impose a .5 percent tax on the use of a

<sup>&</sup>lt;sup>7</sup> See also Miller v. City of Portland, 356 Or 402, 429 n 2, 338 P3d 685 (2014) (Balmer, C.J., dissenting: "the general common sense purpose \* \* \* which voters would have had in mind").

motor vehicle, payable by the purchaser. Section 96 (2)(b) sends the revenues from this tax to the Fund. Payment of the tax imposed by section 91 is a requirement for a purchaser to register a vehicle, section 109, chapter 750, Oregon Laws 2017, just like the emission fee at issue in *Automobile Club of Oregon*. A purchaser need not pay the tax, however, if a dealer has paid the tax imposed by section 90.

The upshot of this interplay between sections 90 and 91 means that, if the dealer pays the tax imposed by section 90 and, as allowed, collects the amount of the tax from the purchaser, the revenues are not dedicated to the Fund, but, if the purchaser pays the tax instead of the dealer, the revenues are dedicated to the Fund. The people cannot have intended for two transactions with identical economic consequences for motorists to have different outcomes. If, as it is, the tax imposed by section 91 is a tax on "ownership, operation or use of motor vehicles," then the tax imposed by section 90 is too.

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### 5. Conclusion

For the reasons set forth above, this Court should determine that section 90, chapter 750, Oregon Laws 2017 imposes a tax or excise levied on the ownership, operation or use of motor vehicles subject to the provisions of Article IX, section 3a, of the Oregon Constitution.

Respectfully submitted this 3<sup>rd</sup> day of November, 2017.

### DAVIS WRIGHT TREMAINE LLP

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- (1)(a) "Bicycle" means a vehicle that is designed to be operated on the ground on wheels and is propelled exclusively by human power.
  - (b) "Bicycle" does not include durable medical equipment.
  - (2) "New motor vehicle" has the meaning given that term in ORS 803.350 (8)(c).
- (3) "Retail sales price" means the total price paid at retail for a taxable vehicle, exclusive of the amount of any excise, privilege or use tax, to a seller by a purchaser of the taxable vehicle.
  - (4) "Seller" means:
- (a) With respect to the privilege tax imposed under section 90 of this 2017 Act and the use tax imposed under section 91 of this 2017 Act, a vehicle dealer.
- (b) With respect to the excise tax imposed under section 92 of this 2017 Act, a person engaged in whole or in part in the business of selling bicycles.
- (5) "Taxable bicycle" means a new bicycle that has wheels of at least 26 inches in diameter and a retail sales price of \$200 or more.
- (6) "Taxable motor vehicle" means a new motor vehicle with a gross vehicle weight rating of 26,000 pounds or less that is:
  - (a) A vehicle as defined in ORS 744.850, other than an all-terrain vehicle;
  - (b) A bus trailer as defined in ORS 801.165;
  - (c) A camper as defined in ORS 801.180;
  - (d) A commercial bus as defined in ORS 801.200;
  - (e) A commercial motor vehicle as defined in ORS 801.208;
  - (f) A commercial vehicle as defined in ORS 801.210;
  - (g) An electric assisted bicycle as defined in ORS 801.258;
  - (h) A fixed load vehicle as defined in ORS 801.285;
  - (i) A moped as defined in ORS 801.345;
  - (j) A motor assisted scooter as defined in ORS 801.348;
  - (k) A motor home as defined in ORS 801.350;
  - (L) A motor truck as defined in ORS 801.355;
  - (m) A tank vehicle as defined in ORS 801.522;
  - (n) A truck tractor as defined in ORS 801.575;
  - (o) A truck trailer as defined in ORS 801.580; or
  - (p) A worker transport bus as defined in ORS 801.610.
  - (7) "Taxable vehicle" means a taxable bicycle or a taxable motor vehicle.
- (8) "Transportation project taxes" means the privilege tax imposed under section 90 of this 2017 Act, the use tax imposed under section 91 of this 2017 Act and the excise tax imposed under section 92 of this 2017 Act.
  - (9)(a) "Vehicle dealer" means:
- (A) A person engaged in business in this state that has been issued a vehicle dealer certificate under ORS 822.020; and
- (B) A person engaged in business in another state that would be subject to ORS 822.005 if the person engaged in business in this state.
- (b) Notwithstanding paragraph (a) of this subsection, a person is not a vehicle dealer for purposes of sections 89 to 111 of this 2017 Act to the extent the person:
- (A) Conducts an event that lasts less than seven consecutive days, for which the public is charged admission and at which otherwise taxable motor vehicles are sold at auction; or
- (B) Sells an otherwise taxable motor vehicle at auction at an event described in this paragraph.

SECTION 90. Imposition of tax for privilege of engaging in the business of selling taxable motor vehicles at retail; vehicle dealer allowed to collect amount of privilege tax from purchaser of taxable motor vehicle. (1) A tax is imposed on each vehicle dealer for the privilege of engaging in the business of selling taxable motor vehicles at retail in this state.

- (2) The privilege tax shall be computed at the rate of 0.5 percent of the retail sales price of the taxable motor vehicle. The tax may be rounded to the nearest whole cent.
- (3)(a) A vehicle dealer may collect the amount of the privilege tax computed on the retail sales price of a taxable motor vehicle from the purchaser of the taxable motor vehicle.
- (b) Notwithstanding paragraph (a) of this subsection, the purchaser of a taxable motor vehicle from whom the privilege tax is collected is not considered a taxpayer for purposes of the privilege tax imposed under this section.

SECTION 90a. ORS 822.043 is amended to read:

822.043. (1) As used in this section:

- (a) "Integrator" has the meaning given that term in ORS 802.600.
- (b) "Vehicle dealer" means a person issued a vehicle dealer certificate under ORS 822.020.
- (2) A vehicle dealer may elect to prepare, submit, or prepare and submit documents necessary to:
  - (a) Issue or transfer a certificate of title for a vehicle;
  - (b) Register a vehicle or transfer registration of a vehicle;
  - (c) Issue a registration plate;
  - (d) Verify and clear a title;
  - (e) Perfect, release or satisfy a lien or other security interest;
  - (f) Comply with federal security requirements; or
- (g) Render any other services for the purpose of complying with state and federal laws related to the sale of a vehicle.
  - (3) A vehicle dealer who prepares any documents described in subsection (2) of this section:
- (a) May charge a purchaser of a vehicle a document processing fee for the preparation of those documents.
- (b) May not charge a purchaser of a vehicle a document processing fee for the submission of any document or the issuance of a registration plate.
- (c) May charge a purchaser of a vehicle a document processing fee for performing any of the services described in subsection (2) of this section in connection with preparing the documents described in subsection (2) of this section.
- (4) A purchaser of a vehicle may negotiate the amount of the document processing fee with a vehicle dealer, but in no case shall the document processing fee charged by a vehicle dealer under this section exceed:
  - (a) \$150, if the vehicle dealer uses an integrator; or
  - (b) \$115, if the vehicle dealer does not use an integrator.
- (5) If a vehicle dealer charges a document processing fee under subsection (4)(a) of this section, of the amount collected \$25 shall be paid to the integrator.
- (6) Unless otherwise provided by rule, if a vehicle dealer uses an integrator and charges a document processing fee greater than that charged for not using an integrator, the dealer must inform the purchaser of the vehicle of the option of using an integrator to prepare the documents. The purchaser may then elect whether or not to have the vehicle dealer use an integrator to prepare the documents.
- (7) If the purchaser of a vehicle pays a document processing fee, the vehicle dealer shall prepare and submit all documents to complete the transaction as permitted by law.
- (8)(a) A vehicle dealer who collects the privilege tax imposed under section 90 of this 2017 Act from the purchaser of a taxable motor vehicle may collect the privilege tax at the same time and in the same manner as the vehicle dealer collects document processing fees under this section. The amount of the privilege tax shall be in addition to and not in lieu of document processing fees collected under this section.
- (b) A vehicle dealer may exclude the amount of the privilege tax from the capitalized cost and offering price of a taxable motor vehicle as those terms are defined by the Department of Justice by rule.

SECTION 91. Imposition of use tax on taxable motor vehicles purchased at retail. (1) A use tax is imposed on the storage, use or other consumption in this state of taxable motor vehicles purchased at retail from any seller.

- (2) The use tax shall be computed at the rate of 0.5 percent of the retail sales price of the taxable motor vehicle.
  - (3) The use tax is a liability of the purchaser of the taxable motor vehicle.
- (4) The use tax shall be reduced, but not below zero, by the amount of any privilege, excise, sales or use tax imposed by any jurisdiction on the sale, or on the storage, use or other consumption, of the taxable motor vehicle. The reduction under this subsection shall be made only upon a showing by the purchaser that a privilege, excise, sales or use tax has been paid.
- (5) The amount of the use tax shall be separately stated on an invoice, receipt or other similar document that the seller provides to the purchaser or shall be otherwise disclosed to the purchaser.
- (6) A purchaser's liability for the use tax is satisfied by a valid receipt given to the purchaser under section 93 of this 2017 Act by the seller of the taxable motor vehicle.

SECTION 92. Imposition of excise tax on retail sale of taxable bicycles. (1) An excise tax of \$15 is imposed on each sale at retail in this state of a taxable bicycle.

- (2) The excise tax is a liability of the purchaser of the taxable bicycle.
- (3) The amount of the excise tax shall be separately stated on an invoice, receipt or other similar document that the seller provides to the purchaser or shall be otherwise disclosed to the purchaser.
  - (4) A seller shall collect the excise tax at the time of the taxable sale.
- (5) A purchaser's liability for the excise tax is satisfied by a valid receipt given to the purchaser by the seller of the taxable bicycle.

SECTION 93. Collection of use tax. (1) A seller shall collect the use tax imposed under section 91 of this 2017 Act from a purchaser of a taxable motor vehicle and give the purchaser a receipt for the use tax in the manner and form prescribed by the Department of Revenue if:

- (a) The seller is:
- (A) Engaged in business in this state;
- (B) Required to collect the use tax; or
- (C) Authorized by the department, under rules the department adopts, to collect the use tax and, for purposes of the use tax, regarded as a seller engaged in business in this state; and
- (b) The seller makes sales of taxable motor vehicles for storage, use or other consumption in this state that are subject to the use tax.
  - (2) A seller required to collect the use tax under this section shall collect the tax:
  - (a) At the time of the taxable sale; or
- (b) If the storage, use or other consumption of the taxable motor vehicle is not taxable at the time of sale, at the time the storage, use or other consumption becomes taxable.
- (3) To ensure the proper administration of section 91 of this 2017 Act, and to prevent evasion of the use tax, the following presumptions are established:
- (a) A taxable motor vehicle is stored, used or otherwise consumed in this state if it is present in this state for private or public display or storage.
- (b)(A) A taxable motor vehicle sold by any seller for delivery in this state was sold for storage, use or other consumption in this state unless the contrary is proved.
- (B) The burden of proving the contrary is on the seller unless the seller takes from the purchaser a resale certificate to the effect that the taxable motor vehicle was purchased for resale in the ordinary course of the purchaser's business.
- (c)(A) A taxable motor vehicle delivered outside this state to a purchaser known by the seller to be a resident of this state was purchased from the seller for storage, use or other

consumption in this state and stored, used or otherwise consumed in this state unless the contrary is proved.

- (B) The contrary may be proved by:
- (i) A statement in writing, signed by the purchaser or an authorized agent of the purchaser and retained by the seller, that the taxable motor vehicle was purchased for storage, use or other consumption exclusively at a designated point or points outside this state; or
- (ii) Other evidence satisfactory to the department that the taxable motor vehicle was not purchased for storage, use or other consumption in this state.

SECTION 94. Exempt sales. (1) Notwithstanding section 90 of this 2017 Act, a seller is not liable for the privilege tax with respect to a taxable motor vehicle that is sold to:

- (a) A purchaser who is not a resident of this state; or
- (b) A business if the storage, use or other consumption of the taxable motor vehicle will occur primarily outside this state.
- (2) Notwithstanding section 90 of this 2017 Act, a seller is not liable for the privilege tax with respect to an otherwise taxable motor vehicle that is sold at an event that lasts less than seven consecutive days, for which the public is charged admission and at which otherwise taxable motor vehicles are sold at auction.
- (3) Notwithstanding sections 90 to 93 of this 2017 Act, a resale certificate taken from a purchaser ordinarily engaged in the business of selling taxable vehicles relieves the seller from the obligation to collect and remit transportation project taxes. A resale certificate must be substantially in the form prescribed by the Department of Revenue by rule.

SECTION 95. Refunds for excess payment. (1) If the amount of transportation project taxes paid by a seller or purchaser exceeds the amount of taxes due, the Department of Revenue shall refund the amount of the excess.

- (2) Except as provided in subsection (3) of this section, the period prescribed for the department to allow or make a refund of any overpayment of transportation project taxes paid shall be as provided in ORS 314.415.
- (3) The department shall apply any overpayment of tax first to any amount of transportation project taxes that is then outstanding.

SECTION 96. Deposit of revenue from privilege and use taxes on taxable motor vehicles.

(1) The Department of Revenue shall deposit all revenue collected from the privilege tax imposed under section 90 of this 2017 Act and the use tax imposed under section 91 of this 2017 Act in a suspense account established under ORS 293.445 for the purpose of receiving the revenue. The department may pay expenses for the administration and enforcement of the privilege and use taxes out of moneys received from the privilege and use taxes. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

- (2) After payment of administrative and enforcement expenses under subsection (1) of this section and refunds or credits arising from erroneous overpayments, the department shall transfer the balance of the moneys received from the privilege and use taxes as follows:
  - (a) Moneys attributable to the privilege tax shall be transferred as follows:
- (A) \$12 million shall be transferred annually to the Zero-Emission Incentive Fund established under section 152 of this 2017 Act.
- (B) After the transfer required under subparagraph (A) of this paragraph, the balance of the moneys shall be transferred to the Connect Oregon Fund established under ORS 367.080.
  - (b) Moneys attributable to the use tax shall be transferred to the State Highway Fund. SECTION 96a. Section 96 of this 2017 Act is amended to read:

Sec. 96. (1) The Department of Revenue shall deposit all revenue collected from the privilege tax imposed under section 90 of this 2017 Act and the use tax imposed under section 91 of this 2017 Act in a suspense account established under ORS 293.445 for the purpose of receiving the revenue. The department may pay expenses for the administration and enforcement of the privilege and use

procedures, apply to the determinations of taxes, penalties and interest under sections 89 to 111 of this 2017 Act.

SECTION 105. Department of Revenue to administer and enforce laws. (1) The Department of Revenue shall administer and enforce sections 89 to 111 of this 2017 Act.

- (2) The department may adopt or establish rules and procedures that the department considers necessary or appropriate for the implementation, administration and enforcement of sections 89 to 111 of this 2017 Act and that are consistent with sections 89 to 111 of this 2017 Act.
- (3) The Department of Transportation shall enter into an agreement with the Department of Revenue for purposes of the implementation, administration and enforcement by the Department of Transportation of those provisions of section 109 of this 2017 Act, and rules or procedures adopted or established by the Department of Revenue under this section, that the Department of Transportation and the Department of Revenue determine are necessary for the effective and efficient implementation, administration and enforcement of section 109 of this 2017 Act.

SECTION 106. Department of Transportation assistance in use tax collection responsibilities. (1) The Department of Revenue and the Department of Transportation shall enter into an agreement pursuant to which the Department of Transportation shall assist the Department of Revenue in the collection of the use tax imposed under section 91 of this 2017 Act and any other functions of the Department of Revenue under sections 89 to 111 of this 2017 Act as may be provided under the agreement.

- (2) The agreement is not intended to preclude performance by the Department of Revenue of collection functions as from time to time may be required, nor is the agreement intended to preclude the performance of functions by the Department of Transportation, under less formal arrangements made with the Department of Revenue, with respect to the use tax imposed under section 91 of this 2017 Act if the functions are not specifically mentioned in the agreement.
- (3) The Department of Transportation may contact, consult with and enter into agreements with any public or private person for the purpose of assisting the Department of Revenue in the collection of the use tax under this section.
- (4) The collection of taxes under sections 89 to 111 of this 2017 Act by the Department of Transportation does not render the Department of Transportation or the agents and employees of the Department of Transportation responsible for collection of the taxes.

SECTION 107. Applicability. Sections 89 to 111 of this 2017 Act apply to sales of taxable vehicles that become final, and the storage, use or other consumption in this state of taxable vehicles that becomes taxable, on or after January 1, 2018.

SECTION 108. Section 109 of this 2017 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 109. Vehicle registration and titling; proof of payment of taxes. (1) A person that purchases a taxable motor vehicle from a seller that is not subject to the privilege tax imposed under section 90 of this 2017 Act may not register or title the taxable motor vehicle in Oregon unless the person provides proof that the person:

- (a) Paid the use tax imposed under section 91 of this 2017 Act; or
- (b) Is not required to pay the use tax for the reasons provided in section 91 (4) of this 2017 Act.
- (2) The person shall provide the proof described in subsection (1) of this section to the Department of Transportation in the manner established by the department by rule.

SECTION 110. Applicability. Section 109 of this 2017 Act applies to taxable motor vehicles purchased on or after January 1, 2018.

SECTION 111. Tax moratorium. (1) A local government may not impose a tax described in subsection (2) of this section unless the tax is:

(a) Authorized by statute; or

- (b) Approved by the governing body of the local government and in effect on or before the effective date of this 2017 Act.
  - (2) This section applies to:
- (a) A tax on the privilege of engaging in the business of selling taxable motor vehicles at retail; and
  - (b) Any other privilege, excise, sales or use tax on taxable motor vehicles.

SECTION 111a. Not later than September 15, 2019, and September 15, 2021, the Department of Transportation shall submit reports in the manner required under ORS 192.245 to the Joint Committee on Transportation established under section 26 of this 2017 Act describing in detail the enforcement by the department of the provisions of ORS chapter 822 governing the certification of vehicle dealers.

SECTION 112. Legislative intent; expedited judicial review to Supreme Court; expiration.

(1) It is the intent of the Legislative Assembly that revenue from the privilege tax imposed under section 90 of this 2017 Act is not subject to the provisions of Article IX, section 3a, of the Oregon Constitution.

- (2) Original jurisdiction to determine whether section 90 of this 2017 Act imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a, of the Oregon Constitution, is conferred on the Supreme Court.
- (3)(a) Any person interested in or affected or aggrieved by section 90 of this 2017 Act may petition for judicial review under this section. A petition for review must be filed within 30 days after the effective date of this 2017 Act.
- (b) The petition must state facts showing how the petitioner is interested, affected or aggrieved and the grounds upon which the petition is based.
- (4) The filing of a petition under this section shall stay the transfer under section 96 (2)(a) of this 2017 Act of the balance of moneys received, pending the determination of the Supreme Court. The Supreme Court may not stay the imposition of the tax under section 90 of this 2017 Act or the collection and enforcement of the tax under any provision of law.
  - (5) Judicial review under this section shall be limited to:
  - (a) The provisions of this 2017 Act authorizing the imposition of the privilege tax; and
- (b) The legislative history and any supporting documents related to Article IX, section 3a, of the Oregon Constitution.
- (6) In the event the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.
- (7) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.
- (8) If the Supreme Court determines that section 90 of this 2017 Act imposes a tax or excise levied on the ownership, operation or use of motor vehicles that is subject to the provisions of Article IX, section 3a, of the Oregon Constitution, sections 90 and 91 of this 2017 Act are repealed and moneys from the privilege tax imposed under section 90 of this 2017 Act that, as of the date of the determination, have not been expended or irrevocably pledged for repayment of bonded indebtedness shall be transferred to the State Highway Fund.

NOTE: Sections 113 and 114 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 115. ORS 305.992 is amended to read:

305.992. (1) If any returns required to be filed under ORS 475B.700 to 475B.760 or sections 89 to 111 of this 2017 Act or ORS chapter 118, 314, 316, 317, 318, 321 or 323 or under a local tax administered by the Department of Revenue under ORS 305.620 are not filed for three consecutive years by the due date (including extensions) of the return required for the third consecutive year,

## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on November 3, 2017, I directed the **PETITION FOR** REVIEW UNDER SECTION 112, CHAPTER 750, OREGON LAWS 2017 to be electronically filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563, by using the Court's electronic filing system.

I further certify that on November 3, 2017, I directed the **PETITION FOR REVIEW UNDER SECTION 112, CHAPTER 750, OREGON LAWS 2017** to be served upon the parties listed below via 1<sup>st</sup> Class Mail and email.

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