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November 17, 2026

Portland City Council
Finance and Governance Committee of the Whole

Submitted Electronically

Re: Opposing the proposed wage ratio surtax increase

Dear Finance and Governance Committee members,

On behalf of the Council On State Taxation (COST), I am writing in opposition to the proposal to amend the City's Business License Law Code to include new compensation ratios and increase the CEO Pay Ratio Surtax and gross receipts exemption amount. In addition to continuing a significant compliance and administrative issue, this proposal would create an even wider artificial tax classification between publicly and non-publicly traded companies, discourage economic investment in the City, and would increase constitutional challenges to the Surtax. Thus, COST urges the Committee to reject the proposed amendments to Code Sections 7.02.400 and 7.02.500.

About COST

COST is a nonprofit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 450 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, with many of our members conducting business in Portland.

Policy Against CEO-to-Median-Wage Ratio Taxes

The COST Board of Directors adopted a formal policy position regarding CEO-to-median-wage ratio taxes and surtaxes.[1] That policy position states:

> *Predicating a state or local tax on a CEO-to-median-wage pay ratio has no basis in sound tax policy. Such measures create an artificial tax classification between publicly traded and private companies and create difficult compliance issues. Further, these taxes are constitutionally suspect because*

[1] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-comments-and-testimony/010920-cost-opposition-to-ca-sb-37-ceo-ratio-rate-increase---final.pdf.

they measure and increase taxes based on business activities that typically take place outside of the jurisdiction imposing the tax.

Differential Treatment Represents Unsound Tax Policy

As we testified in 2016 when this surtax was originally introduced, the CEO-to-median-wage ratio tax is generally only applicable to publicly traded companies subject to the SEC reporting requirements. A fair and neutral tax treats similarly situated taxpayers similarly. Publicly traded companies comprise less than 1% of U.S. companies, and there is no reasonable basis to treat public companies differently than private companies.

Inability to Audit and Potential Repeal of Dodd-Frank Would Create Compliance Difficulties

The use of the SEC CEO-to-median-wage ratio to determine a state or local tax is misguided and unworkable for several reasons. First, the SEC has stated that it does not intend to audit the ratio reported by subject companies. Thus, it is unclear how a state or local government expects to enforce such a provision in the absence of federal oversight. Second, the Dodd-Frank Act has previously been targeted for repeal. If the Act is successfully repealed, pay ratio disclosure will likely be discontinued and the basis for applying and calculating the tax would no longer exist. Finally, using the SEC pay ratio as a basis for calculating a tax creates uncertainty and severe forecasting and financial reporting difficulties for companies whose pay ratio may fluctuate above and below the targeted ratio.

Constitutionally Suspect

The proposed changes to the Surtax would exacerbate both State and U.S. constitutional issues with the State's Uniformity Clause, and U.S. Equal Protection, Due Process, and Commerce Clauses.

State Uniformity and U.S. Equal Protection Issues

Read together, the Oregon Supreme Court has interpreted Article I, Section 32 and Article IX, Section 1 to require consistency and equality in taxation.[2] The CEO-to-median-wage ratio Surtax creates differing tax treatment of similarly situated companies (i.e., publicly traded versus private) with no rational basis. Further, two publicly traded companies may use different methods to calculate their respective ratios, both of which would be valid under the SEC rules even if, for example, they include the use of drastically different wage information. This all raises both Uniformity Clause concerns under state constitutions as well as Equal Protection Clause concerns under the U.S. Constitution.[3]

[2] *State ex rel. v. Malheur County Court*, 185 Or 392, 410-11, 203 P2d 305 (1949).
[3] See *Metropolitan Life Insurance Co.*, 470 U.S. 869 (1985).

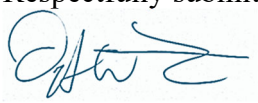
U.S. Due Process and Commerce Clause Issues

The group of affiliated companies used to determine the SEC pay ratio encompasses all corporate entities worldwide and is based on a 50 percent ownership threshold. Under the US Constitution, states are prohibited by the Commerce Clause from taxing any entity that lacks "substantial nexus" with the taxing jurisdiction. Thus, the affiliated group of companies with nexus to the state or local jurisdiction imposing the tax will almost certainly be composed of different entities than those used to calculate the SEC pay ratio. In addition, a CEO-to-median-wage ratio tax impermissibly attempts to impose a tax that is based on activities with no connection to the taxing jurisdiction.[4] For example, in most cases neither a company's CEO nor most of its employees (from which the wage ratio is derived) will be physically located in the taxing jurisdiction. These issues raise significant concerns under both the Due Process and Commerce Clauses of the U.S. Constitution.[5]

Conclusion

COST urges the Committee to reject the current proposal's approach and instead pursue alternatives that promote revenue stability without increasing complexity, discouraging investment, and subjecting the city to increased risk of constitutional challenges.

Respectfully submitted,



Dylan Waits

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director

[4] Also known as "extraterritorial taxation" violating external consistency requirements under the U.S. Commerce Clause, this issue was recently upheld by Maryland's tax court in a decision addressing the State's digital advertising tax, see *Peacock TV LLC v. Comptroller of Maryland*, No. 23-DA-00-0654 (Md. Tax Ct. Aug. 14, 2026 – on appeal).

[5] See *Complete Auto*, 430 U.S. 274 (1977) and *Jefferson Lines*, 514 U.S. 175 (1995).