

A Summary and Concerns about Ordinance No. 2022-005, the Law Enforcement Retail Activities Tax (LERAT)

The state of Oregon has no overall sales tax but does allow local governments to tax retail activity. Given this permission, Josephine County Commissioners came up with LERAT as the kind of tax most likely to be approved by their tax-averse voters. The 3 percent tax, which would be enacted between April 15 and October 15 would get tourists to help pay for the deputies needed to keep them safe while enjoying summer outdoor activities, they said, relieving the burden on property owners.

Although Oregonians tend to take pride in the fact they only pay sticker price for goods in the state, some counties have tiptoed into charging targeted sales taxes. The City of Ashland has a 5 percent tax on prepared food and non-alcoholic drinks called the Restaurant Tax. The City of Yachets in Lincoln County does the same. The City of Portland has a 1 percent “gross receipts tax” as a surcharge on business licenses that is probably reflected in a slight boost in retail prices there. The City of Ontario, tired of Idaho residents shopping on the Oregon side to avoid a 6 percent sales tax in their state, passed a 1 percent sales tax a few years ago, but Ontario voters got enough signatures to put the tax on the ballot. It was soundly defeated.

Josephine County Commissioners believe voters will like the idea of having tourists help pay for law enforcement while avoiding a levy on their property. They believe voters will also like the idea that marijuana growers, who only pay taxes to the state, will pay a tax every time they need a new shovel. DeYoung says he doesn’t see the county going after people in what they call the cash-based “backroom economy” (garage sales, Craigslist, etc.) because they will still end up paying the tax when they buy something with their “backroom income.” However it is worth taking a look at what is actually taxed based on the definition provided by Ordinance No. 2022-005.

There are three main parts of Ordinance No. 2022-005 - what is taxed, how the tax is enforced and how the tax is collected.

What is taxed by the ordinance? This question was asked of Commissioner Dan DeYoung and County Legal Counsel Wally Hicks. Hicks said we would be paying a sales tax on what the ordinance describes in legalese, as “Conversions.” This is defined as “the transfer of property or *the provision of services in exchange for payment.*” So, does this mean that if you pay someone to cut your lawn, or thin your woods, fix your gutters or repair your car that you pay tax on the labor? What about doctor/dental services?

The answer from Hicks: The transactions described (noted above), including medical and dental care, would be taxed. The vendors would be responsible for paying the tax collector.

In addition to collecting the sales tax from county businesses, the ordinance also includes “conversions that are delivered to a consumer or location in Josephine County regardless of shipping source.” This means everything you buy from Amazon or any other online merchant will be taxed.

When the Ontario City Council wanted to pass a sales tax they first commissioned a study for \$20,000 to find out how much revenue the tax would generate. Josephine County Commissioners did no study but they came up with a figure of \$18 million based on calculations by someone Commissioner Herman Baertschiger knew in a finance office in Salem. Although Commissioner DeYoung has since said he has “no idea” how much the tax will actually bring in, they continue to use the \$18 million figure when promoting the tax. There are significant items that are exempt from the sales tax in the ordinance including groceries, prescription drugs, income from rentals, real estate appreciation, internet and phone access, motor vehicle fuel, lodging and “new light-duty vehicles” whatever that means. Exempted are also tobacco products, lottery tickets, liquor, marijuana, investment holdings including precious metals, gifts, public utilities and anything excluded from taxation by state or federal law. There is also a limit of \$2000 when taxing large purchases, such as a car. It isn’t known if Baertschiger’s friend calculated all the exemptions when he came up with the \$18 million figure. There is also a provision in the ordinance that kicks 7 percent of the tax revenue into a “contingency fund” in case of recession and 5 percent to every business that administers the tax. There is no study to show exactly how the \$18 million was calculated.

How is the tax enforced? The ordinance says all retailers will be responsible for collecting and paying the tax to the county. They will be required to file a Notice of Operations with the Retail Tax Board. What is the Retail Tax Board? The ordinance calls for the establishment of a three-person unelected board with one member appointed by commissioners, one appointed by the Cave Junction City Council and one appointed by the Grants Pass City Council because the ordinance splits the sales tax receipts with the two cities, promising extra money for patrol in Cave Junction and a reduction of the law enforcement levy in Grants Pass by as much as a dollar per thousand.

Members of this Board will be compensated at \$200 a month. The only qualification is to be at least 18 years old and provide a statement of economic interests showing no conflict. This commission will be tasked with enforcing the tax, imposing penalties, conducting public hearings concerning violation disputes and representing the county if such a dispute is appealed to the Circuit Court. A violation will fall in the “public nuisance” category and will be prosecuted as such with fines and up to a year in jail. The Board will also maintain a registry of “participants except consumers” (anyone who accepts money for goods or services) and they will monitor compliance, including reviewing Oregon Income Tax Returns. It isn’t clear what they will be looking for and with what criteria.

How is the tax collected? The County Tax Collector will oversee the collection of the sales tax. That office has said one employee would be dedicated to monitoring the sales tax. The ordinance does not say, however, who will develop the process or what information will be needed to be submitted by the “participants except consumers?” Will the Tax Collector disburse the funds to the Sheriff’s Department, Cave Junction and the Grants Pass Police Department? The ordinance says the collection date will be “on or before the first day of March.” This has already caused concern among merchants who say this doesn’t line up with their bookkeeping. An informal attempt to remedy this has been discussed.

Concerns about Ordinance No. 2022-005

1. Grants Pass voters already approved a public safety levy of \$1.79. In order to get Grants Pass voters to approve the sales tax, Commissioners say they will share proceeds from the sales tax with the city for law enforcement that could reduce that levy by \$1. Where that calculation came from is anyone's guess. The Grants Pass City Council, not relying on a guess, retained the ability to adjust that levy according to what they actually get. If income from the sales tax is less than they get from the levy, they can just reduce the levy by 25 cents or not reduce it at all. The promise that city voters will pay less on their tax bill is not guaranteed.
2. There is no definition of "seller" in the ordinance. Is a "seller" anyone who accepts payment for anything? Is it the kid who mows his neighbor's lawn for a few dollars? Is it the babysitter? Is it the dog walker? Will the fee for adopting a cat from the county animal shelter include the 3 percent sales tax?
3. Out of county purchases are not addressed. While marketplace purchases, such as through Amazon, may be collected what about others? There is a Supreme Court ruling from 2018 saying taxing states must establish a threshold of sales before out-of-area sellers are required to submit sales tax. That ruling states there cannot be an undue burden on the sellers. Ordinance No. 2022-005 clearly has significant undue burden: a tax in a county in a state without a sales tax, a sales tax that only applies for part of the year, the cap of \$2,000 plus the broad ambiguous exclusion of items excluded from taxation by state or federal law (what are those?), compliance is not on a typical frequency (most sales tax is due the month following the end of the tax period which in most cases is monthly)...all could qualify as an undue burden.
4. Medical and professional services are rarely taxed. Only three states do this, Hawaii, South Dakota and New Mexico.
5. Will the county need to hire a sales tax expert to report to Commissioners on what to change via yet another ordinance that could be reversed by a vote of the people? How much would that cost?
6. The burden of collecting the tax will be easier for major businesses, especially those operating in other states with sales taxes, but think about the impact on our small businesses that either sell merchandise or offer repair/maintenance services. Think about the impact to our doctors and dentists. Any time you have to repair something, you not only pay the tax on the parts you need for the repair, but you pay a tax on the service as well. At the dentist, you not only pay a tax on your new bridge, but for the service of installing it.
7. While tourists may pay for meals, cold drinks, haircuts, possibly car repair or a visit to an urgent care center, they are unlikely to require the kinds of services people who live

here need every day, are unlikely to order from online businesses and if they did they'd most likely have it delivered to their residence anyway. So this tax will add to the cost of items residents order online, which could result in a run on post office boxes in Jackson County, or more traffic between Medford and Grants Pass.