



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
March 22, 2005

Contact: Carla Corbin
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on March 21, 2005, for initiative petition #28, proposing a statutory amendment, for the General Election of November 7, 2006.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**PROHIBITS INHERITANCE TAXES OR ANY INCOME TAXES ON MONEY,
PROPERTY THAT CHANGES OWNERSHIP BY INHERITANCE**

RESULT OF "YES" VOTE: "Yes" vote prohibits state, cities, or political subdivisions from imposing "inheritance tax" (undefined) or any income tax on money, property that changes ownership by inheritance.

RESULT OF "NO" VOTE: "No" vote retains current state tax on income produced by inherited property; rejects prohibiting state, cities, or political subdivisions from imposing an "inheritance tax" (undefined).

SUMMARY: Current law imposes one-time state tax on estates of decedents dying on or after January 1, 2006, if the estate's gross value—determined by federal tax law as of December 31, 2000—is \$1 million or more. A state tax also is imposed annually on income produced by an estate or by inherited property. A tax is not currently imposed on the right of a beneficiary to inherit property. Measure prohibits the state, municipal corporations, or political subdivisions from imposing an "inheritance tax" (undefined) or income tax of any kind on money, property that "is inherited or otherwise changes ownership by inheritance." Applies to estates of decedents dying on or after January 1, 2006. Reduces state revenue; provides no replacement revenue. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.25. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on April 4, 2005. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 75,630. These signatures must be filed in this office not later than July 7, 2006.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

March 21, 2005

John Lindback
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

BILL BRADBURY
SECRETARY OF THE STATE

2005 MAR 21 PM 1:40

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Re: Proposed Initiative Petition — Prohibits Inheritance Taxes Or Any Income Taxes On Money, Property That Changes Ownership By Inheritance
DOJ File #BT-28-05; Elections Division #28

Dear Mr. Lindback:

Pursuant to ORS 250.067, we have reviewed the comments submitted in response to the draft ballot title for the above-referenced petition. We provide the enclosed certified ballot title, reflecting changes to each of its parts.

We received a comment letter submitted by Margaret Olney, on behalf of commenters Kris Kain and Chip Terhune, and a second comment letter submitted by Steven Novick. This letter summarizes the comments we received, our responses to those comments, and the reasons we declined to make some of the proposed changes. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

A. Caption

The draft ballot title included the following caption:

**PROHIBITS "INHERITANCE TAX" OR INCOME TAX ON MONEY OR
PROPERTY THAT CHANGES OWNERSHIP BY INHERITANCE**

All of the commenters assert that the proposed initiative prohibits taxes from *ever* being levied against income generated by assets that have been transferred through inheritance and that the draft caption fails to alert voters of this effect. They suggest that this defect can be remedied by including the phrase "of any kind" in the caption of the certified ballot title. We agree that the proposed initiative appears to prohibit taxes from ever being levied against income generated by inherited money or property. But that is because the prohibition on income taxes is written without any exceptions or limitations, not because the measure applies to income taxes "of any kind." While we believe that the draft caption "reasonably identifies the subject matter" of the measure, ORS 250.035(2)(a), it is possible to redraft the caption to include a reference to the measure's use of the word "any," and we have done so.

Commenters Kain and Terhune also suggest that the draft caption's use of the singular phrases "inheritance tax" and "income tax" "makes it sound like some other taxes may be acceptable." To the extent that suggestion stems from a belief that the phrase "of any kind" modifies the phrase "inheritance tax" as well as the phrase "income tax," we reject it. The phrase "of any kind" applies to the phrase "income tax." It does not modify the phrase "inheritance tax." Nor does it stand as an independent prohibition on taxes "of any kind." We nonetheless modify the caption to include the plural term "taxes" because the measure prohibits several public entities from imposing "inheritances taxes" or "income taxes."

We therefore certify the following amended caption:

PROHIBITS INHERITANCE TAXES OR ANY INCOME TAXES ON
MONEY, PROPERTY THAT CHANGES OWNERSHIP BY INHERITANCE

B. Result Statements

The draft result statements read as follows:

"Yes" vote prohibits state, cities, or political subdivisions from imposing "inheritance tax" (undefined) or income tax on money or property that changes ownership by inheritance.

"No" vote rejects prohibition against state, city, or political subdivision "inheritance tax" (undefined) or income tax on money or property that changes ownership by inheritance.

1. "Yes" statement

All of the commenters reiterate their previously voiced concerns about the breadth of the measure and urge us to include the phrase "of any kind" in the "yes" statement as well. As explained above, we agree that the proposed initiative reasonably can be read to prohibit taxes from ever being levied against income generated by inherited money or property. But that is because the prohibition on income taxes is written without any exceptions or limitations, not because the measure applies to income taxes "of any kind." While we believe that the draft "yes" statement is a "simple and understandable statement" describing the result of the measure if approved, ORS 250.035(2)(b), it is possible to redraft the caption to include a reference to the measure's use of the word "any," and we have done so.

Although not raised as a formal comment, commenters' proposed alternative "yes" statements raise another issue. Kain and Terhune propose the following "yes" statement: "'Yes' vote prohibits both 'inheritance taxes' on assets that change ownership by inheritance and income taxes of any kind on income generated by those assets. Novick proposes a "yes" statement that reads as follows: "'Yes' vote prohibits state/local 'inheritance tax' (undefined) or

income tax of any kind on assets transferred by inheritance or income generated from those assets.”

Notably, the first proposed “yes” statement completely omits references to the measure’s prohibition on cities and political subdivisions, and the second substitutes the word “local” in the place of the words “cities” and “political subdivisions.” Word limitations may, at times, require a ballot title to omit such terms. Here, however, we believe that the certified statement below provides the best and most accurate description of the breadth of the measure, if approved. We do not adopt the suggested omissions and alterations because the omission of the words “cities” and “political subdivisions” and substitution of “local” in place of “cities” and “political subdivisions” may not fully capture the breadth of the measure. In particular, we note that the phrase “political subdivisions” generally includes regional governments, school districts, transit districts, fire districts, and other similar entities.

We certify the following “yes” statement:

RESULT OF “YES” VOTE: “Yes” vote prohibits state, cities, or political subdivisions from imposing “inheritance tax” (undefined) or any income tax on money, property that changes ownership by inheritance.

2. “No” statement

Novick does not suggest any changes to the draft “no” statement. Kain and Terhune, however, assert that the draft “no” statement fails to provide the voters any “additional useful information” because it “simply puts a ‘rejects’ in front of the draft ‘yes’ vote result statement.” They propose the following alternative: “‘No’ vote retains current law authorizing one-time inheritance tax on estates worth more than \$1 million and income tax on income generated by inherited property.”

We agree that the statement should reflect that a “no” vote would retain current law imposing a tax on the income generated by inherited property and have modified the statement accordingly.

We do not accept the other change Kain and Terhune urge us to make, however. Altering the statement to say that a “no” vote would “retain” the current tax on estates might lead voters to believe that a “yes” vote would *alter* it. We are not certain that a “yes” vote would alter the one-time tax Oregon currently imposes on estates because it is not clear to us that the tax is an “inheritance tax” within the meaning of the proposed measure. *See generally Black’s Law Dictionary* 704 (5th ed 1979) (defining “inheritance tax” as the tax “imposed upon the privilege of receiving property from a decedent at death as contrasted with an estate tax which is imposed on the privilege of transmitting property at death”); Oregon Laws 1977, ch 666, §§ 9, 10 (amending provisions that taxed the estate itself and imposed inheritance taxes on its beneficiaries); *Oregon State Police Officers’ Assn. v. State of Oregon*, 323 Or 356, 384 n 1, 918 P2d 765 (1996) (Fadeley, J., concurring) (noting that “Oregon has had no inheritance tax * * * for over a decade”). *See also Mannix v. Kulongoski*, 323 Or 485, 495-96, 918 P2d 839 (1996)

(Attorney General did not err in declining to speculate about scope of existing law); *Carson v. Myers*, 326 Or 248, 253, 951 P2d 700 (1998) (declining to “speculate among arguable meanings of a measure”).

We certify the following “no” statement:

RESULT OF “NO” VOTE: “No” vote retains current state tax on income produced by inherited property; rejects prohibiting state, cities, or political subdivisions from imposing an “inheritance tax” (undefined).

C. Summary

The draft ballot title contained the following summary:

SUMMARY: Current law imposes a state tax on the income produced by a trust or an estate. A state tax is also imposed on the right to transfer any interest in property within the state that is subject to the federal estate tax imposed under the December 31, 2000 version of the federal Internal Revenue Code. A state tax is not currently imposed on the right to acquire an interest in property as described above. This measure prohibits the state, municipal corporations, or any political subdivision from imposing an “inheritance tax” (undefined) or income tax of any kind on money or property that is “inherited or otherwise changes ownership by inheritance.” Applies to estates of decedents dying on or after January 1, 2006. Other provisions.

Kain and Terhune raise a number of concerns with the draft summary. First, they assert that the draft summary’s reference to a “trust” is misleading. We agree and have deleted that reference.

Kain and Terhune next suggest that, as written, the draft summary might lead voters to believe that “all inherited property is subject to an estate tax when, in fact, only high value estates are taxed.” We agree and have adopted a variant of Kain and Terhune’s proposed language.

Kain and Terhune also ask us to include in the summary a statement indicating that the measure would reduce state revenue. Although word limitations prevent us from adopting the specific language Kain and Terhune propose, we have modified the summary to address this issue.

We have also modified the summary to make it clear that, under current law, a state income tax is imposed annually on income produced by an estate or by inherited property. We believe that this change adequately addresses Novick’s concern that the draft summary implies that the measure would not affect taxes on the income produced by inherited property and similar concerns raised by Kain and Terhune.

As certified, the summary states:

SUMMARY: Current law imposes one-time state tax on estates of decedents dying on or after January 1, 2006, if the estate's gross value—determined by federal tax law as of December 31, 2000—is \$1 million or more. A state tax also is imposed annually on income produced by an estate or by inherited property. A tax is not currently imposed on the right of a beneficiary to inherit property. Measure prohibits the state, municipal corporations, or political subdivisions from imposing an "inheritance tax" (undefined) or income tax of any kind on money, property that "is inherited or otherwise changes ownership by inheritance." Applies to estates of decedents dying on or after January 1, 2006. Reduces state revenue; provides no replacement revenue. Other provisions.

D. Conclusion

For the forgoing reasons, we have made changes to the draft ballot title. We certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

Julie A. Smith
Assistant Attorney General

JAS:mlk/APP77955

Enclosure

c: Peter Shepherd, Deputy Attorney General
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BALLOT TITLE

**PROHIBITS INHERITANCE TAXES OR ANY INCOME TAXES ON
MONEY, PROPERTY THAT CHANGES OWNERSHIP BY
INHERITANCE**

RESULT OF "YES" VOTE: "Yes" vote prohibits state, cities, or political subdivisions from imposing "inheritance tax" (undefined) or any income tax on money, property that changes ownership by inheritance.

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SUMMARY: Current law imposes one-time state tax on estates of decedents dying on or after January 1, 2006, if the estate's gross value—determined by federal tax law as of December 31, 2000—is \$1 million or more. A state tax also is imposed annually on income produced by an estate or by inherited property. A tax is not currently imposed on the right of a beneficiary to inherit property. Measure prohibits the state, municipal corporations, or political subdivisions from imposing an "inheritance tax" (undefined) or income tax of any kind on money, property that "is inherited or otherwise changes ownership by inheritance." Applies to estates of decedents dying on or after January 1, 2006. Reduces state revenue; provides no replacement revenue. Other provisions.

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