

Comment	Section	Concern	Revenue Division Recommendation
1	Definition of "Large Retailer"	Please restore "any manufacturer or other" to Section 3, subsection 8(d)(i).	Suggestion adopted; the original language will be restored.
2	Definition of "Large Retailer"	Preference that the term Large Retailer not be used. They requested that the word "large" be removed from the Code.	No change. Large Retailer was a defined term included in the Ballot Question.
3	Definition of "Large Retailer"	The definition of "Large Retailer" lacks clarity, as it simply duplicates initiative language on how much revenue a retailer must derive rather than providing clarification on what a retailer is. This opportunity to provide a common-sense definition of a retailer, aligned with what the initiative proponents used in their campaign literature, ought not be missed.	No change. Large Retailer was a defined term included in the Ballot Question. Further definition will be provided in an administrative rule.
4	Definition of "Large Retailer"	Although the Revenue Division's stated purposes is to clarify the ordinance as passed and assist in administration, the suggested changes create more ambiguity. As passed, the ordinance's reference to "national" sales is clear, and the determination of the \$1 billion threshold is based on retail sales within the United States. Thus, the retail receipts tax applies only to businesses with national or U.S. gross receipts from retail sales that have exceeded the \$1 billion threshold (assuming the taxpayer meets the other two requirements). The use of the terms "national" and "nationally" clearly refer to the United States' territory, and subsection (b) of the definition specifically refers to the "United States." With the deletion of the references to "national," "nationally," and the "United States," the Revenue Divisions' proposed amendments seem to indicate a business might be required to consider its worldwide (as opposed to U.S. or national) sales; however, that is unclear. The Revenue Division's proposed amendments would add needless ambiguity to a provision that was straightforward as passed.	Suggestion partially adopted. It is important to understand that for the purposes of the Business License Tax, all sales reported on the combined tax return are already limited to national sales earned within the United States. The City's Business License Tax already ties to the State of Oregon, which is a "water's edge" state. This limits Oregon, and the City because our Code generally follows state law, to only taxing income earned within the United States. To address the concern about clarity, Revenue Division will be proposing an amendment to 7.02.110 to add a subsection to clarify that the Business License Tax and CES apply to income reportable to Oregon, and therefore only national sales.
5	Definition of "Large Retailer"	The Revenue Division's deletion of the reference to "manufacturer," however, will create more confusion and ambiguity. For manufacturing businesses that were specifically exempt under the ordinance, those businesses may now be subject to inquiry by the Revenue Division as to whether they are "engaged in retail sales within the City." The answer may not always be clear, and because neither Oregon nor the City has any prior history with a retail sales tax, there is no relevant Oregon legal authority or case law to guide taxpayers and the Revenue Division. Again, the Revenue Division's attempt to provide clarity is likely to create confusion where there did not appear to be any (i.e., for certain manufacturing businesses that were specifically exempted by the voters).	The CES is not a retail sales tax and "manufacturing businesses" are only exempt as to their manufacturing activities. Manufacturing activity is not taxable, but retail activity, even if conducted by a manufacturer, is taxable.
6	Definition of "Large Retailer"	The Revenue Division proposes to delete the word "prior" in the phrase "prior tax year" found in the definition of "Large retailer." The phrase "prior tax year" in that definition is intended to provide the period during which a business is determined to meet the threshold requirements of a "large retailer" and, thus, would be subject to the tax for the next tax year. With the Revenue Division's proposed amendments, a business would be subject to and required to pay the tax in the same tax year. This proposal is a significant change to the ordinance as passed. Not only could it increase the pool of businesses subject to the tax, it would create significant uncertainty as to whether a business is subject to the retail receipts tax for any given year. Under the tax regime as passed by the voters, a business would clearly know at the end of a tax year as to whether it would be subject to the tax in the following year. Without knowing this, a taxpayer may be delinquent in making certain estimated tax payments and would likely face significant challenges in the operation of its business generally.	No change. Much like the Business License Tax, a taxpayer would be required to make estimated payments for taxes due in the current year without regard to last years taxes. The safe harbor provisions that apply for underpayment of business taxes would also apply to the surcharge. Nearly all gross receipts and income taxes are predicated upon current tax year, not prior year, in calculating tax liability. Examples include federal, state and local corporate income taxes.
7	Definition of "Large Retailer"	Concern that this will be unfairly applied. Simply using the word "large" to define retail is quite subjective. We would prefer that you narrow this to definition to simply "retail."	No change. Large Retailer was a defined term included in the Ballot Question.

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8	Definition of "Large Retailer"	The proposed amendments replace this language with "has Total Gross Revenue from retail sales of \$1 billion (\$1,000,000,000) or more in the tax year." Portland Clean Energy Community Benefits Initiative 2018, Section 3.8.b. This change replaces a clear and unambiguous standard which the voters approved with a different standard. It is unclear whether "annual gross revenue from retail sales" includes revenues from United States locations, as stated in the ordinance as passed, or whether it would include revenues from a broader geographic area, such as international revenues. Expanding the receipts base for purposes of determining whether a taxpayer is subject to the Clean Energy Surcharge would seem to go beyond the ordinance as passed.	Suggestion partially adopted. It is important to understand that for the purposes of the Business License Tax, all sales reported on the combined tax return are already limited to national sales earned within the United States. The City's Business License Tax already ties to the State of Oregon, which is a "water's edge" state. This limits Oregon, and the City because our Code generally follows state law, to only taxing income earned within the United States. To address the concern about clarity, Revenue Division will be proposing an amendment to 7.02.110 to add a subsection to clarify that the Business License Tax and CES apply to income reportable to Oregon, and therefore only national sales.
9	Definition of "Qualified Groceries"	Concerned with tying to Oregon HB 2122 for definition of grocery.	No change. Groceries are defined by federal SNAP guidelines.
10	Definition of "Qualified Health Care Services"	Requested to reference ORS 731.162 for the definition of health insurance.	May be addressed by administrative rule.
11	Definition of "Qualified Health Care Services"	Qualified healthcare services, language from the initiative, similarly is not a term that should be repeated in ordinance to define a broader category that was explicitly exempted in the initiative. We request at a minimum that the common Oregon definition of health insurance, at ORS 731.162, be explicitly listed in the exemptions as the initiative itself stated that health insurance was not covered.	May be addressed by administrative rule.
12	Definition of "Retail Sale"	The draft ordinance takes an expansive view of what a retail sale is by using an "includes but is not limited to" clause. That approach is fraught with peril and is inconsistent with both common drafting rules and ORS definitions of retail sales. As one example, business-to-business transactions clearly were not intended to be covered by the initiative and are not included in ORS definitions of retail sales. However, the expansive definition in the ordinance draft leaves the door open for future rulemaking arguments to the contrary - that a business or its owner is a consumer of a good or service purchased for the entire enterprise. We request that common transactions of that nature be explicitly exempted from the ordinance so that the rulemaking process can focus on the intent of the initiative proponents.	This concern will be addressed by administrative rule.
13	Definition of "Retail Sale"	The current definition of "Retail Sale" is also at odds with other taxing jurisdictions, which typically provide detailed definitions with certain exceptions and the enumeration of specific services which meet the definition. For example, in Washington and Seattle, retail sale is a specifically defined term, with certain exceptions, such as component purchases or wholesale transactions. In Portland, at present, it is unclear what is — and as important, what is not — included in the current definition. Our current assumption is that, as with other gross receipts jurisdictions, Portland would exclude wholesale transactions, rentals, and certain enumerated services. Any guidance on this point is greatly appreciated.	This concern will be addressed by administrative rule.
14	Definition of "Retail Sale"	Applicability to their business with mixed retail/wholesale sales.	This concern will be addressed by administrative rule.
15	Definitions for "Total Gross Revenue" and "Retail Gross Revenue"	As passed, the tax base of the retail receipts tax was to be calculated in the same manner as retail sales are calculated for determining whether a business might be subject to the retail receipts tax as a large retailer." In other words, the same language is used in both the tax calculation provision as in the definition of "Large retailer" in the ordinance that was approved by voters. The Revenue Division, however, is now suggesting a different method for calculating the threshold amount. Thus, creating a disconnect between the sales used to determine whether a taxpayer is subject to the tax and the sales to which the tax actually applies.	No change. For ease of administration and taxpayer understanding, all taxpayers with total sales that exceed both thresholds will complete a schedule to determine if they have Retail Sales subject to the surcharge thresholds to determine the amount of surcharge due. This amendment does not change who pays, and only slightly increases the number of taxpayers who will file.

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16	Disallowance of deduction of CES	Including the disallowance of a deduction for a tax based on gross revenues in a paragraph titled "Taxes Based on or Measured by Net Income" introduces a potential ambiguity into the Code. We suggest that the City change the title of Section 7.02.600.G to "Nondeductible Taxes" or a similar title that removes this ambiguity.	Suggestion adopted.
17	Itemizing the CES on a receipt	Did not like the addition to the City Code stating that any surcharge levied onto the customer would be also subject to the Clean Energy Surcharge. Believe that they should be able to itemize the surcharge on sales receipts without that itemized surcharge also being subject to the surcharge.	No change. The surcharge is not a sales tax and is to be paid by the retailer, not the consumer. The retailer is free to adjust prices.
18	Itemizing the CES on a receipt	Can the tax be passed onto the consumer and if there are any special instructions (receipt enumeration) on it, if applicable?	No change. The surcharge is not a sales tax and is to be paid by the retailer, not the consumer. The retailer is free to adjust prices.
19	Itemizing the CES on a receipt	The treatment of the itemizing the tax on a receipt makes it a gross receipt that's subject to the tax —so it becomes infinity.	No change. The surcharge is not a sales tax and is to be paid by the retailer, not the consumer. The retailer is free to adjust prices.
20	Itemizing the CES on a receipt	The code states that the surcharge is not imposed directly on the consumer and stating the Clean Energy Surcharge on the consumer's invoice does not impose it on the consumer. Are retailers prohibited from passing the 1% surcharge onto consumers as a separate line item on an invoice?	No change. The surcharge is not a sales tax and is to be paid by the retailer, not the consumer. The retailer is free to adjust prices.