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We received the attached complaint from a representative of the “Yes on 97” campaign regarding the “Wilco” ad being aired by “Defeat the Tax on Oregon Sales” campaign. Attached is the response from the “Defeat the Tax on Oregon Sales” organization.

After reviewing the complaint and response, we will continue to run the “Wilco” ad.

Signed:

J. R. Jackson, General Manager



NICK KAHL
ATTORNEY

October 10, 2016

VIA EMAIL ONLY

RE: *False and Misleading Statements in "Wilco"*

Dear Broadcasters:

I write on behalf of the Yes On 97 campaign committee to draw your attention to a false and misleading television advertisement opposing Ballot Measure 97, paid for by Defeat the Tax on Oregon Sales ("Defeat") campaign committee. You currently air the advertisement titled "Wilco" on your television stations. A detailed explanation of the false and misleading statements contained in this advertisement follows below. As required by the FCC and the public interest, your station must stop airing this advertisement immediately and refuse to air it in the future.

Defeat's television advertisement claims:

On screen: Measure 97's Tax: Would be highest tax on gross sales in the country. Source: Nonpartisan Tax Foundation

Brenda: But 'measure 97' would require hundreds of Oregon businesses like Wilco to pay the highest tax on sales in the country.

First, Measure 97 is not a "tax on gross sales." Defeat relies upon the Tax Foundation's report "Oregon Measure 97: The threat to Oregon's Tax Climate" to substantiate its claim.¹ The Tax Foundation's report does not use that phrase. Instead, the Tax Foundation compares Measure 97 to gross receipts taxes in several other states. And, the Tax Foundation's report **does not conclude** that Measure 97 would be the "highest" gross receipts tax in the nation.

It is important to note that the Tax Foundation's report is a selective analysis. For example, the Tax Foundation's report fails to mention New Mexico. New Mexico has a

¹ Available at <http://taxfoundation.org/article/oregon-initiative-petition-28-threat-oregon-s-tax-climate>.



NICK KAHL
ATTORNEY

gross receipts tax that “varies throughout the state from 5.125% to 8.6875% depending on the location of the business.”² Meaning, New Mexico has a gross receipts tax that is more than double the rate proposed by Measure 97.

Nonetheless, even within the context of the Tax Foundation report’s selective analysis, the Tax Foundation is still forced to conclude that Measure 97 “would create a gross receipts tax with the highest rate in the country, **except** for the rate charged on radioactive waste disposal in Washington State.”

In sum, Measure 97 does not create the highest gross receipts tax in the country. New Mexico’s gross receipts tax rate is more than double Measure 97’s proposed rate. And even the Tax Foundation’s report—which does not address New Mexico in its analysis—concludes that Washington has a higher gross receipts tax rate. By any measure, Defeat’s claim is false.

Second, Defeat’s claim that Measure 97 would impose “the highest tax on sales in the country” is false. Defeat provides no support for this claim.

Measure 97 proposes a 2.5% tax on C corporations’ sales over \$25,000,000. It is not a sales tax. However, even accepting Defeat’s characterization of it as a sales tax, it would not be the “highest” in the country. At 2.5%, Measure 97 would be dead last in comparison with the 45 states that have a statewide sales tax, according to the Tax Foundation’s report “State and Local Sales Tax Rates, Midyear 2016.”³

No matter how Defeat characterizes Measure 97, whether as a gross receipts tax or, inaccurately, as a sales tax, Measure 97’s 2.5% tax rate is not the “highest” in the country. Defeat’s specific claims in this ad are false.

Defeat does not have a “right to command the use of broadcast facilities.” *CBS v. DNC*, 412 U.S. 94, 113 (1973). Your station has no obligation to air any advertisements from Defeat. Because your station is not legally required to air this advertisement, your station bears responsibility for the advertisement’s content if the station does air the

² Available at <http://www.tax.newmexico.gov/Businesses/gross-receipts.aspx>.

³ Available at <http://taxfoundation.org/article/state-and-local-sales-tax-rates-midyear-2016>.



NICK KAHL

ATTORNEY

advertisement. *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).

Your station has a duty under Federal Communications Commission regulations "to protect the public from false, misleading or deceptive advertising." *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license. *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

Defeat's advertisement is false, misleading, and deceptive. Accordingly, we demand that you refuse to air the advertisement on your station.

Thank you for your immediate attention to this matter. Please call if you have any questions and to inform me of your decision. I can be reached at the office number or email address detailed below.

Very Truly Yours,
Nick Kahl, LLC

Nicholas A. Kahl
Attorney

October 11, 2016

Jay T. Waldron
T: 503-796-2945
jwaldron@schwabe.com

RE: Defeat the Tax on Oregon Sales | No on 97

Dear Station Manager:

We represent Defeat the Tax on Oregon Sales.

This letter responds to Nick Kahl's letter dated October 10, 2016, complaining about what he claims are false statements in a television advertisement from Defeat the Tax on Oregon Sales. We address each complaint in sequence. Each complaint is unfounded.

First, Mr. Kahl claims that Measure 97 is not a tax "on sales" or on "gross" sales. Mr. Kahl does not provide any substantiation for this claim because there is none. Measure 97 amends ORS 317.090, which is a tax on "Oregon sales," a tax that, by definition, is a tax on gross sales. A copy of Measure 97 is enclosed for your reference.

Second, Mr. Kahl claims that Measure 97 does not propose the highest tax on sales in the country. Mr. Kahl attempts to substantiate this point through reference to taxes on sales that are markedly different than those in Measure 97. Mr. Kahl is comparing apples to oranges. According to the non-partisan Oregon Legislative Revenue Office, only five states impose a tax on sales as proposed by Measure 97. The rates for those taxes are all below the 2.5% of gross sales tax that Measure 97 proposes. Substantiation for this information can be found [here](#).

Third, neither the Oregon Legislative Revenue Office nor the Tax Foundation addresses the New Mexico taxes Mr. Kahl references because those taxes are not taxes on a corporation's gross sales in the manner that Measure 97 proposes. For example, the New Mexico taxes do not apply to the sale of goods, such as the goods Wilco sells. The New Mexico taxes are also higher in rate only because the total rate combines and stacks rates imposed by the state, as well as counties, and municipalities. Measure 97 is a state tax only.

Finally, the rate of tax in Washington on "Income" from cleaning up radioactive waste is different and irrelevant because it is not a tax on "sales." In addition, the tax is on a specific ultra-hazardous activity, which is separate and apart from the Washington gross receipts tax that is comparable to Measure 97.

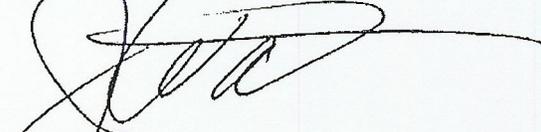
October 11, 2016

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Please let us know if you have any questions or need additional information.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.

A handwritten signature in black ink, appearing to read 'J. Waldron', with a large, sweeping flourish extending to the right.

Jay T. Waldron

JTW:ksy
Enclosure

PDX\096100\115520\JTW\19257291.1

– Substantiation Memo –

CLIENT: Coalition to Defeat the Tax on Oregon Sales
 TITLE: “House” –
 FORMAT: TV :30
 DATE: October 6, 2016

Audio	Substantiation
<p>How much would Measure Ninety Seven’s tax on sales increase your costs?</p>	<p>Measure 97 would establish a new corporate minimum tax for C-Corps and companies filing as C-Corps. This tax would be \$30,001 + 2.5% of Oregon sales of goods and services over \$25 million.</p> <p>Measure 97 http://oregonvotes.org/irr/2016/028text.pdf</p> <p>The Legislative Revenue Office (LRO) study determined that Measure 97’s tax on sales would be passed down to consumers and businesses in the form of higher prices for goods and services.</p> <p>https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p>
<p>Ninety Seven would tax sales of electricity, insurance for homes and cars, sales of gasoline, and phone, Internet and cable TV services.</p>	<p>Measure 97 would establish a new corporate minimum tax for C-Corps and companies filing as C-Corps. This tax would be \$30,001 + 2.5% of Oregon sales of goods and services over \$25 million.</p> <p>Measure 97 does not exempt the products or services listed in the ad.</p> <p>Measure 97 http://oregonvotes.org/irr/2016/028text.pdf</p> <p>The Legislative Revenue Office determined that all industry sectors would experience a tax increase under Measure 97 compared to current law (Table 4, page 7), and that Measure 97 would result in higher consumer prices. The nonpartisan economists from the LRO stated “Taxes initially born in the retail trade, wholesale trade and utility sectors are expected to result in higher prices for Oregon residents.”</p> <p>https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p>
<p>Ninety Seven would even tax sales of medicine and healthcare and food products.</p>	<p>Measure 97 would establish a new corporate minimum tax for C-Corps and companies filing as C-Corps. This tax would be \$30,001 + 2.5% of Oregon sales of goods and services over \$25 million.</p>

	<p>Measure 97 does not exempt the products or services listed in the ad.</p> <p>Measure 97 http://oregonvotes.org/irr/2016/028text.pdf</p> <p>The research report conducted by the nonpartisan Legislative Revenue Office determined that Measure 97 would increase healthcare taxes from \$7.9 million to \$103.6 million, an increase of \$95.7 million.</p> <p>https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p>
<p>No wonder the state of Oregon's own study found Ninety Seven would cost a typical household six hundred dollars per year.</p>	<p>The Legislative Revenue Office determined Measure 97 would cost the average Oregon household over \$600 per year.</p> <p>https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p>
<p>To stop this costly state tax on sales, vote NO on Ninety Seven.</p>	<p>Measure 97 is costly because the Legislative Revenue Office determined Measure 97 would increase taxes by \$6 billion per biennium, and cost the average Oregon household over \$600 per year.</p> <p>https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p>

-Substantiation Memo-

CLIENT: Coalition to Defeat the Tax on Oregon Sales
TITLE: "Wilco Farm Stores" (Brenda) -
FORMAT: TV:30
DATE: August 22, 2016

Audio:	Substantiation:
The Wilco Farm Stores were created by Oregon farmers. They're not some big corporation.	In the late 1960's, the Wilco Cooperative was formed to aid farming families with stability, integrity and prosperity. Today, Wilco is still a farmer owned cooperative headquartered in the rural town of Mt. Angel, OR http://www.wilco.coop/about-us/
But Measure Ninety Seven would require hundreds of Oregon businesses like Wilco to pay the highest tax on sales in the country.	Measure 97 would establish a new corporate minimum tax for C-Corps and companies filing as C-Corps. This tax would be \$30,001 + 2.5% of Oregon sales of goods and services over \$25 million. Only five states impose a gross receipts tax, as proposed in Measure 97. The rates are all below Measure 97's 2.5%. They range from .2% to 1.5%. Legislative Revenue Office Measure 97 Description and Analysis https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf
It's a tax on gross sales, not profits. They'd have to pay it even if they're losing money.	Measure 97 would establish a new corporate minimum tax for C-Corps and companies filing as C-Corps. This tax would be \$30,001 + 2.5% of Oregon sales of goods and services over \$25 million. There are no exceptions in Measure 97 for companies who make no profit or lose money. Measure 97 Section 1 http://oregonvotes.org/irr/2016/028text.pdf

Audio:	Substantiation
<p>Ninety Seven would hurt Oregon businesses and hurt consumers by increasing the costs of nearly everything they buy.</p>	<p>The LRO study determined that Measure 97's tax on sales would be passed down to consumers and businesses in the form of higher prices for goods and services.</p> <p>Legislative Revenue Office Measure 97 Description and Analysis https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p> <p>The Tax Foundation also found that Measure 97 would lead to higher consumer prices. http://taxfoundation.org/blog/oregons-gross-receipts-tax-proposal-would-increase-consumer-prices</p> <p>According to the LRO, Measure 97 would increase costs for the average Oregon household by more than \$600 per year. The study also shows Measure 97's tax is regressive, especially hurting lower income Oregon families.</p> <p>Legislative Revenue Office Measure 97 Description and Analysis page 12 and Table 11 https://www.oregonlegislature.gov/lro/Documents/RR%203-16%20Measure%2097.pdf</p> <p>The Portland State University study concluded "Perhaps the most significant disadvantage of a GRT is that it, like other sales taxes, can be markedly regressive. Since lower and middle income households spend a higher percentage of their income on consumption as compared to higher-income households, those households are disproportionately burdened by taxes on transactions that they participate in." http://www.pdx.edu/nerc/sites/www.pdx.edu/nerc/files/Our%20Oregon%20Final%20Report%206-29.pdf</p>
<p>Please join Oregon farmers in voting NO.</p>	<p>Measure 97 is opposed by a broad statewide coalition, which includes many farmers and agricultural organizations such as the Oregon Farm Bureau Federation, the Oregon Dairy Farmers Association, the Oregon Cattlemen's Association, the Oregon Wheat Growers League, and Oregon Women for Agriculture.</p>