

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (07-05)**

Subject

Initiative petition from Herman Kriegshauser regarding a proposed constitutional amendment for Article X, relating to taxation. (Received April 12, 2007)

Date

May 2, 2007

Description

This initiative petition would amend Article X of the Missouri Constitution by adding Section 25. Section 25 would allow for individual and corporate contributors and donors to not-for-profit corporations, organizations and foundations, as defined by the Internal Revenue Service, to receive a fifty percent (50%) state income tax credit against the income taxes due for the taxable year in which the donation or contribution is made, in addition to current federal and state income tax deductions allowable.

Public comments and other input

The State Auditor's Office requested input from the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's Office/Office of Administration**, the **Department of Conservation**, the **State Tax Commission**, the **Department of Transportation**, the **State Treasurer's Office**, **Clay County**, **Greene County**, **St. Charles County**, the **City of Kansas City**, and the **City of St. Louis**.

Assumptions

Officials from the **Department of Agriculture** indicated the initiative petition would have no fiscal impact on their agency.

Officials from the **Department of Corrections** indicated the initiative petition would have no impact on their agency.

The **Department of Conservation** indicated that it does not appear that the proposed amendment would have a significant fiscal impact on the Department. However, they did indicate that it would have a significant adverse fiscal impact on state revenue as a whole.

Officials from the **Department of Economic Development** indicated the initiative petition would have no fiscal or administrative impact on their agency.

Officials indicated the impact of this initiative petition on the **Department of Higher Education** is unknown. However, the Department indicated they receive approximately 82% of its budget from General Revenue, and any limitations placed on these funds or change in the distribution of these funds may negatively impact the Department. Reductions in state revenue will also have a negative but unknown impact in higher education institutions in Missouri.

Officials from the **Department of Elementary and Secondary Education** indicated no impact to the Department. They did indicate that the Department of Revenue is likely to experience an administrative burden. Further they explained that tax credits will reduce tax receipts flowing to the General Revenue fund. More tax credits mean less General Revenue available statewide for state use including education and funding the foundation formula.

The **Department of Insurance, Financial Institutions and Professional Registration** anticipates this initiative petition will result in no costs or savings to the department or in the collection of premium tax. The department's opinion is the phrase "state income tax" excludes the 50% credit from premium taxes paid to the state. However, if "state income tax" is to be interpreted to include premium tax, the fiscal cost is unknown, due to the department not knowing how many insurance companies will choose to participate in the program and take advantage of the tax credits. The department can not estimate how much would be lost in premium tax revenue as a result of tax credits. Premium tax revenue is split 50/50 between General Revenue and County Foreign Insurance Fund except for domestic Stock Property and Casualty Companies who pay premium tax to the County Stock Fund. The County Foreign Insurance Fund is later distributed to school districts through out the state. County Stock Funds are later distributed to the school district and county treasurer of the county in which the principal office of the insurer is located. It is unknown how each of these funds may be impacted by this tax credit each year. The department will require minimal contract computer programming to add this new tax credit to the premium tax database and can do so under existing appropriation.

Officials from the **Governor's Office/Office of Administration** indicated this proposed amendment creates a tax credit against state income taxes for individual and corporate contributors to specified not-for-profit associations. The tax credit is defined as a "50% state income tax credit against state income taxes". Budget & Planning (BAP) assumes this means the value of the credit equals 50% of the value of the donation.

Further, since there is no language addressing refundability, transferability, or carry-forward issues, BAP assumes the proposed credit would be fully refundable; i.e., if the value of the credit exceeds the taxpayer's liability in the tax year in question, the taxpayer would receive the excess amount in the form of a refund from General Revenue (GR).

BAP assumes the first year of fiscal impact would be Tax Year 2008, or Fiscal Year 2009.

Individual Income Tax

BAP's response is based on data from the IRS Statistics of Income for Missouri, Tax Year 2004 (the most recent available). In that year 2,586,000 total tax returns were filed; 802,000 taxpayers itemized deductions, and 688,000 of taxpayers who itemized reported contributions (86%). These contributions totaled \$2.596B, for an average of \$3,773.

BAP assumes itemizing would not be required to receive this tax credit and that up to 86% of all filers will make contributions at the average rate, equaling \$8.391B of contributions (2,586,000 x .86 x 3,773). The average rate of growth in contributions from 2001 to 2004 was 4% annually; assuming this growth rate, BAP estimates \$9.816B of contributions in tax year 2008. Therefore, they estimate that up to \$4.908B of tax credits would be issued for FY 2009.

Corporate Income Tax

BAP's response is based on data from the IRS Statistics of Income for Tax Year 2003 (the most recent available). In that year, US corporations made \$10.823B of contributions. BAP assumes 2% of those were made by Missouri taxpayers, or \$216M. Assuming a 4% growth rate, BAP estimates \$263M of contributions in tax year 2008. Therefore, up to \$132M of tax credits would be issued for FY 2009.

Therefore, the Governor's Office/Office of Administration assume this proposal will annually reduce general and total state revenues up to \$5.040B beginning in FY 2009.

The **Department of Revenue** (DOR) indicated this legislation creates a new tax credit. Tax credits reduce the amount of tax due; therefore, it would reduce the amount of state revenues. This legislation would be an addition to the Missouri Constitution, which makes it subject to a vote of the people.

If approved by the people, this legislation would allow a 50% tax credit against state income taxes due, for donations made to non-profit organizations, in addition to the current federal and state income tax deductions allowed.

The Department estimates the administration of this initiative petition to require 7 FTE bringing the cost of this proposal to \$264,000 for FY 2008, \$280,113 for FY 2009 and \$288,518 for FY 2010.

Customer Services - would require 1 Tax Collection Technician I (\$23,916 annual salary, plus related fringe benefits, expenses and equipment) for every 15,000 calls a year on the income tax hot line due to lack of documentation. 1 Tax Collection Technician I for every 24,000 calls a year to the delinquency/collections line on billings and denied deductions due to lack of documentation. They will also need 1 Tax Processing Technician I (\$23,916 annual salary, plus related fringe benefits, expenses and equipment) for every additional 4,800 contacts in the field offices (DOR anticipates most

customers will contact the department via phone, therefore, will only request 1 FTE for each of the larger field offices including Kansas City, St. Louis, and Springfield).

Corporate/Franchise Tax – would require 1 Tax Processing Technician I for verification purposes.

Personal Tax – assuming DOR is to certify the credit, Personal Tax would require 1 Tax Processing Technician I for every 4,000 credits claimed.

The Department of Revenue also indicated that this legislation is extremely vague, creating a number of issues for DOR and taxpayers:

- The effective date is unknown. Language indicating “beginning on or after January 1, 2008” is recommended.
- Without an effective date, it is unclear if a taxpayer could file amended returns to recoup additional credit on past qualifying donations.
- The language is silent as to if the credit can be refunded, transferred, sold, assigned, or carried forward/back.
- The language does not stipulate who would verify the donation or certify the credit.
- The language does not stipulate what constitutes a contribution or donation.
- By allowing the credit in addition to current federal and state income tax deductions, this would allow taxpayer’s qualifying for this credit to receive double benefit. For example, corporations already get up to 100% credit for contributions, on their federal returns, which flow through to the Missouri return.
- The language is silent as to what the 50% of “what” is supposed to be. Taxation assumes the intent is to allow a credit, toward the taxpayer’s liability, of 50% of the donation. Taxation requests this be clarified.
- The term “U.S. Department of the Treasury, Internal Revenue Service” is not defined. Do they mean charitable organizations pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if so it should be defined.
- It applies credit against “state income taxes.” This term is undefined. It would be better to add “except for section 143.191 to 143.265, RSMo.” The credit should be against the individual or the corporation’s tax liability, not against the employer withholding tax, which an employer retains from the employees and remits to the state. This would allow an employer to apply the credit against withholding taxes, which are not technically “paid” by the employer they are “withheld” by the employer and “paid” by the employee.

Officials from the **State Treasurer's Office** indicated no fiscal impact as a result of this initiative petition.

Officials from the **State Tax Commission** indicated no impact as a result of this initiative petition.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact as a result of this initiative petition.

Officials from the **Department of Mental Health** indicated this initiative petition may increase the number of persons that make such donations; however, this increase would not have a direct fiscal impact to the Department.

The **Department of Social Services** indicated there is no cost to them to place this measure of the ballot. However, they also indicated that the passage of this proposal would result in a decrease in state revenue. It is not known how an overall decrease in state revenue would impact the budget of the Department.

Officials from the **Department of Natural Resources** indicated the initiative petition would have no direct fiscal impact on their agency.

The **Department of Public Safety** indicated that they are unable to determine the fiscal impact of this initiative petition.

Officials from **Greene County** indicated no anticipated fiscal impact on the county as a result of this initiative petition.

Officials from the **City of St. Louis** indicated that it is difficult to estimate the impact of this proposed amendment on the City. On one hand, if the effect of the amendment is to increase charitable donations and these charitable donations in turn reduce the amounts of money the City of St. Louis needs to spend to address the needs of the less fortunate citizens and/or address other City needs, the impact of the amendment will be positive. On another hand, if the amendment does not increase the amount of charitable contributions and/or the increase in charitable contributions made does not reduce the City's cost of providing services to those in need or allow the City to address other needs through philanthropy, and if the result of the tax credit in these circumstances is to reduce the amounts of revenue available from or through the State of Missouri to address the needs of the City and its residents, the impact of the amendment will be negative.

The **City of Kansas City** indicated no fiscal impact on the city as a result of this initiative petition.

The State Auditor's Office did not receive a response from the **Department of Health and Senior Services**, the **Department of Transportation**, **Clay County**, or **St. Charles County**.

Fiscal Note Summary

The cost to state governmental entities is estimated to exceed \$5 billion annually. The cost or savings to local governmental entities is unknown.