

MISSOURI STATE AUDITOR'S OFFICE FISCAL NOTE (10-11)

Subject

Initiative petition from Herman Kriegshauser regarding a proposed constitutional amendment to Article X, Section 25. (Received November 5, 2010)

Date

November 24, 2010

Description

This proposal would amend Article X, Section 25 of the Missouri Constitution.

The amendment is to be voted on in November, 2012.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, 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**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, the **State Tax Commission**, **Clay County**, **Greene County**, **Jackson County Legislators**, **St. Charles County**, **St. Louis County**, the **City of Jefferson**, the **City of Kansas City**, the **City of Kirkwood**, the **City of St. Louis**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Rockwood R-VI School District**, **Linn State Technical College**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

Assumptions

Officials from the **Department of Agriculture** indicated the Missouri Agricultural and Small Business Development Authority is authorized under Chapter 348.430 RSMo to grant an Agricultural Product Utilization Contributor Tax Credit in an amount up to 100% of funds contributed by a person, partnership, corporation, trust, limited liability

company, or other entity. Contributions to the Authority for this purpose qualify as a charitable donation under Section 170 of the Internal Revenue Service code.

Department officials said if initiative petition 10-11 reduces the state income tax credit to 60%, the Authority anticipates losing most if not all of its donations, which would eliminate the ability to make value-added grants to Missouri agricultural and small businesses. The Authority reported providing approximately \$12,000,000 of value-added grants from fiscal year 2000 to fiscal year 2010. Therefore, department officials said the impact on their department would be an average annual loss of \$1,090,909 in value-added grant funding.

Officials from the **Department of Economic Development** indicated they see no impact for their agency, so they are deferring to the Office of Administration.

Officials from the **Department of Elementary and Secondary Education** indicated tax subsidies reduce the state's tax revenues and decrease the amount of money available for public schools and all public school students.

Officials from the **Department of Higher Education** indicated that this initiative petition would have no direct, foreseeable fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated that this initiative, if passed, should have no cost or savings to the department, the department defers to the Office of Administration, Budget and Planning response.

Officials from the **Department of Mental Health** indicated this proposed initiative petition should have no fiscal impact to the department.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this initiative petition.

Officials from the **Department of Corrections** indicated there is no impact for the department for this initiative petition.

Officials from the **Department of Revenue** indicated the initiative petition will have a fiscal impact on the department. Department officials said the Office of Administration estimated this initiative petition would result in 2.1 million tax credit claims associated with the charitable donations. The department estimated this would result in 315,000 additional errors. Department officials estimated they would need 1 FTE per 19,000 errors resulting in the need for an additional seventeen (17) Revenue Processing Technician I for manual review at an estimated cost to the General Revenue Fund of \$684,758 for fiscal year 2012, \$728,609 for fiscal year 2013, and \$750,467 for fiscal year 2014.

In addition, the department officials said the department's response to a proposal similar to or identical to this one in a previous session indicated the department planned to absorb the administrative costs to implement the proposal. The officials said due to budget constraints, reduction of staff and the limitations within the department's tax systems, changes cannot be made without significant impact to the department's resources and budget. Therefore, they estimated the IT portion of the fiscal impact at a level of effort valued at \$13,323. They calculated the value of the level of effort by taking 1 FTE for 3 months at \$4,441 per month to make updates to the individual income tax system.

Department of Revenue officials made the following recommendation regarding this proposal:

The current verbiage appears to allow multiple benefits for one donation. To prevent the taxpayer from receiving multiple benefits, something like the following could be added to the last sentence: "to the extent such contributions and donations that have been subtracted from federal adjusted gross income or federal taxable income are added back in the determination of Missouri adjusted gross income and to the extent such contributions and donations were not claimed as a tax credit under a separate tax credit program."

Officials from the **Department of Public Safety** indicated they are deferring to the Office of Administration on any fiscal impact for this proposal.

Officials from the **Missouri House of Representatives** indicated the proposed initiative petition has no fiscal impact to the operations budget of their agency.

Officials from **Department of Conservation** indicated no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Office of Administration (OA)** indicated passage of this proposal will annually reduce general and total state revenues \$5.529 billion beginning in fiscal year 2013, which is likely 70-80% of net general revenue collections.

Their estimate is based on the following assumptions and calculations. The proposed amendment creates a tax credit against state income taxes for individual and corporate contributors to specified not-for-profit entities, in addition to all current deductions allowable.

The tax credit is defined as a "60% state income tax credit against state income taxes." OA - Division of Budget and Planning (BAP) assumes this means the value of the credit equals 60% of the value of the donation.¹

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

¹ Alternatively, the language could be interpreted to mean that for any size charitable donation, total state income tax liability is reduced 60%.

value of the credit exceeds the taxpayer's liability in the tax year in question, the taxpayer would receive the excess amount as a refund from General Revenue.

BAP assumes if this proposal is approved by voters in November 2012, it becomes effective immediately upon certification. Thus, the first year of fiscal impact would be Tax Year 2012, or Fiscal Year 2013.

BAP indicated the impact of the recent recession and subsequent recovery is unclear on the number and average of contributions.

Individual Income Tax

BAP's response is based on data from the IRS Statistics of Income for Missouri, Tax Year 2008 (the most recent available).² In that year, the IRS estimates 2,739,220 MO tax returns were filed; 854,059 filers itemized deductions, and 668,070 of filers who itemized reported contributions (78%). These contributions totaled \$2,810M, for an average of \$4,206 per filer.

BAP assumes that 2,136,592 filers (78% of all filers) make contributions at the average rate (\$4,206), equaling \$8.987 billion of contributions in 2008. BAP assumes a similar figure will be contributed in Tax Year 2012. A fully refundable 60%-credit will annually reduce general and total state revenues by \$5.392 billion.

Corporate Income Tax

BAP's response is based on data from the IRS Statistics of Income for Tax Year 2007 (the most recent available).³ In that year, the IRS estimates US corporations made \$14.248 billion in contributions. BAP assumes 1.6% of those were made by Missouri taxpayers,⁴ or \$228M. BAP assumes a similar figure will be contributed in Tax Year 2012. A fully refundable 60%-credit will annually reduce general and total state revenues by \$137M.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article I, Section 26, 27, 28 of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year 2009, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$1.35 million to publish (an average of \$270,000 per issue). Therefore, the Secretary of State's office assumes, for the

² <http://www.irs.gov/pub/irs-soi/08in26mo.xls>

³ <http://www.irs.gov/pub/irs-soi/07co02ccr.xls>

⁴ Based on the ratio of Missouri tax to the US Total, Morgan Quitno State Rankings 2010, p.267.

purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have any significant impact on their office.

Officials from the **State Treasurer's office** indicated that with regard to this initiative petition, there will be no direct fiscal impact to their office. Please defer to the Office of Administration Budget and Planning and the Department of Revenue.

Officials from the **State Tax Commission** indicated this proposed amendment will not impact their agency.

Officials from the **City of Jefferson** indicated the city does not anticipate any fiscal impact should this petition become law.

Officials from **Hannibal 60 School District** indicated that this initiative would have a negative financial impact on the revenue stream for public schools. The officials said they cannot state for fact what the dollar amount of the impact would be, but in simple terms, that part of those particular taxes under Article X, Section 25 distributed to the District would be reduced by 60%.

Officials from **Linn State Technical College** indicated that based on the information presented, if this results in a drastic reduction in general revenue for the State of Missouri, there may be a fiscal impact on their college since the majority of their state appropriations come from general revenue funds.

Officials from **Metropolitan Community College** indicated there is not enough information to determine the actual fiscal impact of this petition. However, they said since it would reduce the amount of general revenue available to the State of Missouri, it would likely have a negative fiscal impact on their college.

The State Auditor's office did not receive a response from the **Attorney General's office**, the **Department of Health and Senior Services**, the **Department of Labor and Industrial Relations**, the **Department of Social Services**, the **Governor's office**, the **Department of Transportation**, the **Office of State Courts Administrator**, the **Missouri Senate**, **Clay County**, **Greene County**, **Jackson County Legislators**, **St. Charles County**, **St. Louis County**, the **City of Kansas City**, the **City of Kirkwood**, the **City of St. Louis**, **Cape Girardeau 63 School District**, **Rockwood R-VI School District**, **University of Missouri**, and **St. Louis Community College**.

Fiscal Note Summary

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