

Amendment 64 Implementation Task Force Sub-Committee on Tax/Funding and Civil Law

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

Meeting Minutes

Wednesday, January 23, 2013

11:00 a.m. – 1:00 p.m.

TOPIC: Tax Issues

- I. Call To Order:**
 - a. Co-Chairs David Blake and Senator Cheri Jahn called the meeting to order at 11:03a.m.
- II. Introductions:**
 - a. Attendance:
 - i. Sub-Committee Members Present: Co-Chair David Blake, Co-Chair Cheri Jahn, Bill Callison, Don Childears, Michael Elliott, Holli Hartman, Mary Jo McGuire, John Vecchiarelli, Dan Krug, Adrienne Russman, Kimberlie Ryan, Tamra Ward, Mike Cerbo, Alexis Senger, Dorinda Floyd
- III. Main Task Force Overview: Topic Overlap**
 - The impairment issue will be taken on by both the Consumer Safety/Social and Criminal Law Issues Working Groups.
 - Family law will be handled by the Consumer Safety/Social and Criminal Law Issues Working Groups.
 - The preemption issue will be the Regulatory Framework Working Group
 - A new issue this sub-committee picked up: Emergency Funding sources (Governor/OSPB/Revenue) to comply with the deadlines
- IV. Discussion and Vote on employment recommendation:**
 - a. **Minority Recommendation**
 - i. See the agenda for January 23, 2013 to view the language of the minority recommendation.
 - ii. Again there was discussion on the difference between “restriction” and “prohibition.” The majority viewpoint is that the definitions of the two have the same meaning.
 - iii. There was some discussion over whether “no action” is an okay recommendation to give the full taskforce. David mentioned the full taskforce requested that “no action” not be part of any recommendation.
 - iv. The group came to the agreement that there can be more than one dissenting opinion, but you only get one vote and there must be two or more people supporting the opinion.
 - v. Cheri makes a motion to have a vote on majority and minority report procedure. The minority report will include all the dissenting opinions. 9 people were in support of this procedural vote.
 - vi. David made a motion to table the vote on the actual recommendation language until next week.
- V. Discussion of Tax Issues**

- a. **Background Information on Excise Taxes, Sales A. Taxes, current audit and filing procedures (for MMJ), revenue collection amounts, revenue estimates, etc. (John Vecchiarelli)**
 - Excise taxes are indirect taxes included in the price of the product. Sometimes called duties. Import/wholesale level. Frequently these taxes are a product of the volume of the product being sold. John is not in favor of this because the tax is not tied to inflation or value of the dollar. Colorado currently has excise taxes on alcohol and tobacco. Since 2011, there has been State sales tax on medical marijuana. The amount of taxes collected is pretty consistent from year to year. There was \$5 million in sales tax revenue this year. The third quarter that just ended suggests \$1.8 million was collected. John has no sense of what local revenues would be with recreational marijuana, but the language as written indicates there would be a 15% excise tax until 2017.
 - His office consistently audits both sales and excise taxes. They use a risk-based analysis on selecting accounts for audits. Also look for problematic accounts.
- b. **Is (5)(d) constitutional? C. Does it comply with TABOR?**
 - i. 5(d) is constitutional because it is in the constitution. Must be read in harmony. There was mixed opinions on whether the tax provision complied with TABOR.
- c. **Was (5)(d) approval of a tax such that it can be implemented without another statewide vote?**
 - i. Some felt 5(d) does not authorize a tax increase and does not comply with TABOR. Some thought 5(d) operates completely outside of TABOR and there is no need to obtain further voter approval.
- d. **Does a tax increase require 2/3 vote of both chambers of the General Assembly?**
 - i. If the General Assembly went the statutory route, they need 50+1 and if they went the referendum route they would need a 2/3 majority.
 - ii. There was some discussion about the obstacles that would exist in obtaining a 2/3 majority of the general assembly.
- e. **Can one referendum put in place an up to 15% excise tax AND also be progressive for future years under a formula put forward at same time? In perpetuity?**
 - i. There was a general agreement of yes to this question.
- f. **What if General Assembly fails to pass a referendum?**
 - i. No tax. Some said there still needs to be a vote from the legislature because the people have spoken. There needs to be at least legislation submitted to the General Assembly and if they don't vote, fine. There may be litigation regardless.
- g. **Is (5)(d) enforceable? Can 15% excise cap ceiling be pierced by General Assembly before 2017?**
 - i. There was mention of the language in the bluebook and that language indicates there needs to be another vote by the people to enact the excise tax. Some think the language of the amendment itself trumps the bluebook language and that it's just one of many sources.
- h. **Can earmark of 40 million to schools be enforced if General Assembly dedicates money elsewhere as part of the referendum ultimately approved by the voters?**
- i. **Can General Assembly pass more than one referendum?**
 - i. Yes
- j. **Is there any restriction on other taxes?**

- i. The general assembly can increase the sales tax, but then TABOR would apply.
- k. **Is there any restriction on citizen initiatives?**
 - i. No
- l. **Is there any restriction on sales tax increases at county or local level?**
 - i. Yes
- m. **How/where should tax be collected (grow to manufacturer, point of sale, etc)?**
 - i. There was a general consensus that it is a little premature to consider this question now. However, excise taxes could be collected from the cultivator or manufacturer. There was also a belief that a liberal reading of the amendment could be interpreted to allow excise taxes at every stage. Washington State is taxing marijuana at every stage.
- n. **What is the earliest an excise tax can take effect? (TABOR = odd year elections)**
 - i. Next year.
- o. **What should be done about Section 280e business tax deductions, if anything? MMJ vs. retail store**
 - i. 280E: This IRS provision states that if you are illegally drug trafficking, you can't take business tax deduction. Rent and payroll are the two big ones. This provision was really meant to be applied to illegal drug trafficking and not to a legal business under state law. House Bill 1042 would fix the 280E provision within the State of Colorado. This amendment would apply to both recreational and medical businesses in Colorado.
 - ii. The sponsors asked this sub-committee to chime in on this particular piece of legislation and thought the sub-committee could possibly offer the bill as part of their recommendation.
 - iii. Mike reiterated that these businesses want to be taxed like any other business in the State of Colorado. The IRS is essentially exploiting these businesses by not allowing them to take the business tax deduction. However, these businesses would still be required to pay their full federal taxes, without the business tax deduction.
- p. **Stricter penalties for obfuscation of business type declaration (i.e. tax evasion)?**
- q. **Any restrictions on county local taxes?** Skipped over
- r. **What is optimal tax – higher it goes the more likely black market thrives but want maximum revenue that allows business to exist. Increase penalties for black market sales?**
 - i. Suggested at 15% for excise tax. The first 40 million is not in play. Taxes will be at the local level, which will bring in additional revenue.
- s. **How do u measure the tax – by weight (infused products/oils)? By potency? By plant? (Excise tax is typically collected at the wholesale level).** Not discussed

VI. Draft Recommendation for Discussion Purposes ONLY:

- a. Discussion on the draft recommendations was postponed until next meeting. However, recommendation number 4 was stricken unanimously.

VII. Public Comments:

- a. Agreed that the differences between majority and minority opinions came down to the definition of restrict. This gentleman believes the amendment should be interpreted based on the intent of the voters.
- b. One gentleman gave kudos to Kimberlie Ryan for adhering to what he believes was the voter's intent of Amendment 64. He also believes that any employer who chooses to participate in zero-tolerance drug policy is breaking the law. He believes it's a privilege and not a right to own a business in Colorado. He also

believes that zero-tolerance drug policies place businesses above the law. He believes this a constitutional issue and that the majority recommendation is a guaranteed failure.

- c. One woman wants the sub-committee to consider value over volume for the basis of an excise tax. She believes basing an excise tax on volume won't allow the state to plan ahead with their revenue. She also supports House Bill 1042.
- d. One woman requested that an excise tax exist at the retail stage. Employees using medical marijuana are being screwed.

VIII. Closing:

- a. Next week's topic will be on licensing and application fees.
- b. Motion to adopt the minutes from last week, but no one received them so this was tabled until next week.
- c. The meeting ended at 1:07 pm.