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April 15, 2019

The Honorable Shelley Hughes and
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol Room 30
Juneau, AK 99801

Distributed Via E-mail

Re: CSSJR 4(STA) technical questions

Dear Senator Hughes:

This letter is in response to the Chair's request for review of certain technical questions raised by the Division of Legal and Research Services in the memorandum dated April 12, 2019 regarding the current form of SJR 4. We address the issues below.

- a. *New taxes and increased tax rates – should the phrase “increases the rate of an existing state tax” be amended to address whether the phrase “increases the rate of an existing state tax” includes the reduction of credits or deductions that could result in an increased tax obligation without amending the actual tax rate?*

As stated in hearing testimony, the administration's intent is that changes to deductions, credits, and exemptions from an existing state tax *would not be considered an increase in the rate of an existing state tax and thus would not require voter approval of any such changes*. To the extent the Committee was interested in further clarifying language, the insertion of the word “nominal” before the words “the rate” could be included in section 2 at page 1, line 12 and page 2, line 8.

- b. *Structure of voting – questions were posed about how a bill that creates a new tax or multiple new taxes, or increases the rate of more than one tax, and creates a regulatory program would be dealt with under this proposed amendment. What would go to the people for a vote and in what form?*

The proposed amendment provides that establishing “a” tax or increasing the rate of “an” existing tax shall not take effect unless approved by the voters. Thus, if a bill includes a new tax and also makes other statutory changes – only that new tax would be subject to voter approval. If a bill raises some taxes and lowers or repeals other taxes – only the taxes raised would be subject to voter approval. A bill that includes multiple taxes would be voted on by the people separately as to each new or increased tax. Similarly, if by initiative a new or increased tax was proposed along with a regulatory process, only the tax would be subject to the requirements of the amendment. If you have any suggested language that you believe would help clarify, we would be happy to review it. But we believe the intent has been stated clearly on the record and the language would be interpreted by a court to satisfy the intent of the voters, if this amendment is passed. That intent is clearly to allow the voters to approve or disapprove each new tax or each increase in the nominal rate of an existing tax.

- c. *Referendum – a question was posed regarding the scenario in which a bill decreasing a tax rate was passed but then by referendum the voters rejected that legislation. Article XI, section 6 provides that an act rejected by referendum “is void.”*

The proposed resolution does not change that result.

- d. *Repeal – whether the change made in Article XI, section 6 should be clarified further.*

We do not believe it is necessary and are not sure what language could be added to help clarify. The proposed change is clear in providing for an exception for an initiated law under Article XI, section 6, and this would apply to the entire effective date process. Thus, if this constitutional amendment were to pass, the two year moratorium on repealing the initiated law would not apply. Instead, the legislature would be able to determine whether they want the law to go into effect in the first instance.

- e. *Section 1 reference – whether the reference to Article IX, section 1 appearing in section 3 of the bill (page 2, line 19) should be changed to specify sections 1(b) and (c) of Article IX.*

Although not necessary, the language could further specify section 1(c) which addresses a tax law enacted through the initiative process.

- f. *Tax year – Providing that any changes in tax law resulting from the procedures set forth in the amendment, either by changes initiated first by the legislature or*

the voters, would become effective January 1 of the following fiscal year has been discussed as a possible amendment which would resolve mid-tax year complications.

The administration does not object to this change.

- g. *Notwithstanding – Whether Article II, section 18 should be amended to acknowledge the effective dates proposed by the resolution.*

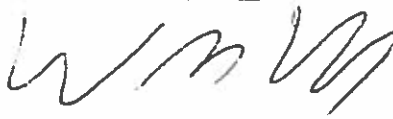
We do not see this as necessary because the constitutional amendment regarding tax changes would govern.

- h. *Resolution – whether uniform rule changes would be required if the amendment passed.*

That is possible. There is no clarification needed with the amendment. The Constitution does not address the specific manner in which the legislature applies its internal rules. Article III, section 23 provides for the legislature to act by resolution concurred in by a majority of members in a joint session. We assume the legislature would apply a similar process if this amendment were passed.

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: 
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WEM/hjh

cc: Members of the Senate Judiciary Committee

