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# Missouri Legislative Academy

## The Hancock Amendment: Missouri's Tax Limitation Measure

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### Origins

In 1980, a Springfield businessman began an initiative petition drive in support of a constitutional amendment that would limit state and local government taxation and spending. That amendment was adopted by the voters on November 4, 1980. It is generally known as the Hancock amendment, after the principal advocate Mel Hancock, and can be found in Article X Sections 18-24 of the Missouri Constitution.<sup>2</sup> The amendment is modeled after a constitutional provision adopted by Michigan voters in 1978 known as the Headlee Amendment. Although Missouri courts have decided dozens of cases interpreting various provisions of the Hancock Amendment, none of the decisions have been based on the construction which Michigan courts have placed on the Headlee Amendment, which are at significant variance from Missouri decisions.<sup>3</sup>

### Substantive Provisions

The Hancock Amendment contains three different limitations: 1) the state revenue limit and tax refund provision; 2) the state mandate provision; and 3) the local government tax limit and voter-approval provision.

#### *State revenue limit*

Section 18(a) limits the amount of taxes which the General Assembly may impose in any fiscal year by requiring that the ratio between total state revenues (TSR) and the personal income of Missourians be the same as the ratio calculated for certain base years (the amendment specifies the TSR for FY81 and the personal income figures for calendar year 1979). That ratio works out to 5.6395%. This constant ratio is then multiplied by the personal income figures for Missourians in later years to determine the revenue limit

<sup>1</sup> Chief Bill Drafter, Committee of Legislative Research, Missouri General Assembly.

<sup>2</sup> The amendment has been reprinted in Appendix A.

<sup>3</sup> Vernon's Annotated Statutes (VAMS) provides an excellent synopsis of major court decisions regarding this amendment and the reader is encouraged to consult VAMS to obtain an overview of those decisions.

for any given year. The limit in state revenue, therefore, is tied to the percentage growth in Missourians' personal income.

To qualify as total state revenues, the funds must be received into the state treasury and must be subject to appropriation. **Missouri Association of Counties v. Wilson**, 3 S.W.3d 772 (Mo. banc 1999). It is important to note, however, that case law requires the exclusion of tax revenues if those revenues have been directly approved by voters after the adoption of the Hancock Amendment. **Goode v. Bond**, 652 S.W.2d 98 (Mo. banc 1983); **Missouri Merchants and Manufacturers Association v. State**, 42 S.W.3d 628 (Mo. banc 2001). The latter case also held that tax credits used to reduce the amount of money a taxpayer owes do not become TSR, but tax credits which exceed the amount of money owed in taxes do become TSR. *Id.* at 635.

Section 18(e) was adopted in 1996 and prohibits the General Assembly from increasing taxes or fees in any fiscal year that would produce "new annual revenues" in excess of either \$50 million (adjusted annually by percentage change in personal income; for FY04 the amount is estimated at \$77.8 million) or 1% of TSR for the second fiscal year before the General Assembly's action, whichever is less. To date, this section has not been interpreted by any court decision.

For any year in which the revenue limit is exceeded by 1% or more, a prorata refund of the excess revenues is made to Missouri state income tax payers. The constitutionality of this provision was upheld by the Missouri Supreme Court in **Missourians for Tax Justice Education Project v. Holden**, 959 S.W.2d 100 (Mo. banc 1997), in which it was argued that the refund was unconstitutional because it went only to income tax payers, not all tax payers. Refunds for FY95, FY96, FY97, FY98, and FY99 were distributed. Approximately \$978.7 million in total refunds (including corporate taxpayers) were made for those years.

## Definitions

*FY (Fiscal Year)* - the period running from July 1 of one year through June 30 of the following year which is used to measure the state budget cycle of revenues and spending.

*General Revenue Fund* - fund in the state treasury into which all state moneys are deposited, unless required by statute or constitutional provision to be deposited into another fund. (See §33.543, RSMo)

*Hancock II* - initiative petition placed on the ballot in 1994 which would have strengthened several provisions of the original Hancock Amendment. The measure was defeated by a wide margin.

*Personal Income of Missouri* - total amount of income received by persons in Missouri from all sources, as defined by the U.S. Department of Commerce. (See article X, § 17(2) in Appendix A)

*Total State Revenue (TSR)* - all general and special revenues, licenses and fees, excluding federal funds. The term is used to describe the total amount of money which the state receives into the state treasury and which is then subject to appropriation; if the amount exceeds a certain limit, the excess must be refunded to state income tax payers. (See article X, §17(1); § 18(b) in Appendix A)

*§18(e) Provision (\$50 Million Limit)* - a referendum amendment adopted in 1996 which imposes an additional limit on the ability of the General Assembly to increase taxes without voter approval. New annual revenues imposed by the General Assembly which in the aggregate exceed \$50 million, or 1% of total state revenues, must first be approved by the voters. The figure is adjusted for changes in personal income of Missouri; for 2004, the amount is estimated at \$77.8 million.

### *State mandate*

Sections 16 and 21 prohibit the state from reducing its proportion of funding for local activities from the level in effect at the time the amendment was adopted (11/4/80) or from requiring local governments to provide new or additional activities or services without the state agreeing to pay the costs. Court cases have emphasized that a violation occurs when two things happen: 1) the state requires a new or increased activity of a political subdivision; and 2) the political subdivision experiences increased costs as a result of the state-mandated new or increased activity or service. *See City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844 (Mo. banc 1993). The political subdivision must show an actual increase in costs; the increase will not be presumed.

If increased costs are shown, then the state must make a specific appropriation which expressly funds the costs of the state-mandated program. *See Rolla 32 School Dist. v State*, 837 S.W.2d 1 (Mo. banc 1992). If a specific appropriation is not made, the recourse for the political subdivision is a declaratory judgment relieving it of the duty to perform the state-mandated activity or service. *See Harrison v. Monroe County*, 716 S.W.2d 263 (Mo. banc 1986). More recently, the court rules that the fee authorized by statute for the issuance of gun permits by counties was insufficient to cover the cost of issuing those permits. *See Brooks v. State of Missouri* 128 S.W.3d 844 (Mo. banc 2004).<sup>4</sup> The Senate Appropriations Staff is not aware of any appropriation as the result of a decision made under the mandate provision of the amendment. In the case of handgun permits, the statute was revised to allocate more of the fee to pay for processing.

### *Local government tax limit/voter approval*

Sections 16 and 22 impose the tax limit and voter-approval requirement on local governments. The general rule is that voter approval is required before any political subdivision can levy any "tax, license or fees" not authorized when the Amendment was adopted or increase the current levy above the level at the time of adoption. In addition, if the existing base of a tax, license or fee is broadened (such as by repealing a deduction or exemption), then the tax rate has to be reduced to yield the same amount as would have been received on the prior base.

The Missouri Supreme Court, in *Keller v. Marion County Ambulance District*, 820 S.W.2d 301 (Mo. banc 1991), enunciated a five-part test to be used in determining what constitutes a "tax, license or fee": the time of the fee payment, the identity of the payer, whether the amount of the fee is affected by the level of goods or services provided to the payer; whether the government is providing the goods or services; and whether the activity has historically and exclusively been provided by the government. *Id.* at 304, fn 10.

If the assessed valuation of property, excluding new construction and improvements,

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<sup>4</sup> Actually, the court ruled that the portion of the fee applied to the cost of processing the application was inadequate. This decision applied only to the four counties that were party to the suit.

increases by a larger percentage than the Consumer Price Index, then a "rollback" of the tax rate is required to yield the same amount as would have been received from the levy on the prior assessed value. This rollback applies on a district-wide basis; consequently, individual property owners can still see a higher-than-CPI increase in their own property tax bills. It is important to note, however, that claims for refunds of taxes collected in violation of the Hancock Amendment must be brought before the taxes become payable, i.e., before the last day of the tax year at issue. *Koehr v. Emmons*, 55 S.W.3d 859 (Mo.App. E.D. 2001).

Plaintiffs sought the rollback of a school district tax levy in *Thompson v. Hunter*, 119 S.W.3d 95 (Mo. banc 2003). The central issue involved whether Article X, Section 11(b), as amended in 1998 and which authorizes a school district to set a property tax levy of \$2.75 without voter approval, was nevertheless subject to the Hancock rollback provisions. The Court held that the 1998 amendment prevailed and authorizes a \$2.75 tax levy by decision of the district school board.

Finally, section 23 specifies that "any taxpayer" has standing to bring suit in circuit court or, when the state is involved, in the Missouri Supreme Court, to enforce the provisions of the Hancock Amendment. A plaintiff who is successful in pursuing a Hancock claim is entitled to reimbursement for reasonable attorney fees and costs. See *Avanti Petroleum, Inc. v. St. Louis County*, 974 S.W.2d 506 (Mo.App.E.D. 1998). A class action by taxpayers is authorized under appropriate circumstances. See *City of Hazelwood v. Peterson*, 48 S.W.3d 36 (Mo.banc 2001).

## **Appendix A<sup>5</sup>**

### **The Hancock Amendment**

*Section 16. Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive, of this article.*

*Section 17. As used in sections 16 through 24 of Article X:*

*(1) "Total state revenues" includes all general and special revenues, license and fees, excluding federal funds, as defined in the budget message of the governor for fiscal year 1980-1981. Total state revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities.*

*(2) "Personal income of Missouri" is the total income received by persons in Missouri from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency.*

*(3) "General price level" means the Consumer Price Index for All Urban Consumers for the United States, or its successor publications, as defined and officially reported by the United States Department of Labor, or its successor agency.*

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<sup>5</sup> The Hancock Amendment, Article X, Sections 16-24 of the Missouri Constitution are reprinted below.

Section 18. (a) *There is hereby established a limit on the total amount of taxes which may be imposed by the general assembly in any fiscal year on the taxpayers of this state. Effective with fiscal year 1981-1982, and for each fiscal year thereafter, the general assembly shall not impose taxes of any kind which, together with all other revenues of the state, federal funds excluded, exceed the revenue limit established in this section. The revenue limit shall be calculated for each fiscal year and shall be equal to the product of the ratio of total state revenues in fiscal year 1980-1981 divided by the personal income of Missouri in calendar year 1979 multiplied by the personal income of Missouri in either the calendar year prior to the calendar year in which appropriations for the fiscal year for which the calculation is being made, or the average of personal income of Missouri in the previous three calendar years, whichever is greater.*

(b) *For any fiscal year in the event that total state revenues exceed the revenue limit established in this section by one percent or more, the excess revenues shall be refunded pro rata based on the liability reported on the Missouri state income tax (or its successor tax or taxes) annual returns filed following the close of such fiscal year. If the excess is less than one percent, this excess shall be transferred to the general revenue fund.*

(c) *The revenue limitation established in this section shall not apply to taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under the provisions of this constitution.*

(d) *If responsibility for funding a program or programs is transferred from one level of government to another, as a consequence of constitutional amendment, the state revenue and spending limits may be adjusted to accommodate such change, provided that the total revenue authorized for collection by both state and local governments does not exceed that amount which would have been authorized without such change.*

Section 18(e). 1. *In addition to the revenue limit imposed by section 18 of this article, the general assembly in any fiscal year shall not increase taxes or fees without voter approval that in total produce new annual revenues greater than either fifty million dollars adjusted annually by the percentage change in the personal income of Missouri for the second previous fiscal year, or one percent of total state revenues for the second fiscal year prior to the general assembly's action, whichever is less. In the event that an individual or series of tax or fee increases exceed the ceiling established in this subsection, the taxes or fees shall be submitted by the general assembly to a public vote starting with the largest increase in the given year, and including all increases in descending order, until the aggregate of the remaining increases and decreases is less than the ceiling provided in this subsection.*

2. *The term "new annual revenues" means the net increase in annual revenues produced by the total of all tax or fee increases enacted by the general assembly in a fiscal year, less applicable refunds and less all contemporaneously occurring tax or fee reductions in that same fiscal year, and shall not include interest earnings on the proceeds of the tax or fee increase. For purposes of this calculation, "enacted by the general assembly" shall include any and all bills that are truly agreed to and finally passed within that fiscal year, except bills vetoed by the governor and not overridden by the general assembly. Each individual tax or fee increase shall be measured by the estimated new annual revenues collected during the first fiscal year that it is fully effective. The term "increase taxes or fees" means any law or laws passed by the general assembly after May 2, 1996, that increase the rate of an existing tax or fee, impose a new tax or fee, or broaden the scope of a tax or fee to include additional class of property, activity, or income, but shall not include the extension of an existing tax or fee which was set to expire.*

3. *In the event of an emergency, the general assembly may increase taxes, licenses or fees for one year beyond the limit in this subsection under the same procedure specified in section 19 of this article.*

4. Compliance with the limit in this section shall be measured by calculating the aggregate actual new annual revenues produced in the first fiscal year that each individual tax or fee change is fully effective.

5. Any taxpayer or statewide elected official may bring an action under the provisions of section 23 of this article to enforce compliance with the provisions of this section. The Missouri supreme court shall have original jurisdiction to hear any challenge brought by any statewide elected official to enforce this section. In such enforcement actions, the court shall invalidate the taxes and fees which should have received a public vote as defined in subsection 1 of this section. The court shall order remedies of the amount of revenue collected in excess of the limit in this subsection as the court finds appropriate in order to allow such excess amounts to be refunded or to reduce taxes and/or fees in the future to offset the excess monies collected.

Section 19. The revenue limit of section 18 of this article may be exceeded only if all of the following conditions are met: (1) The governor requests the general assembly to declare an emergency; (2) the request is specific as to the nature of the emergency, the dollar amount of the emergency, and the method by which the emergency will be funded; and (3) the general assembly thereafter declares an emergency in accordance with the specifics of the governor's request by a majority vote for fiscal year 1981-1982, thereafter a two-thirds vote of the members elected to and serving in each house. The emergency must be declared in accordance with this section prior to incurring any of the expenses which constitute the emergency request. The revenue limit may be exceeded only during the fiscal year for which the emergency is declared. In no event shall any part of the amount representing a refund under section 18 of this article be the subject of an emergency request.

Section 20. No expenses of state government shall be incurred in any fiscal year which exceed the sum of the revenue limit established in sections 18 and 19 of this article plus federal funds and any surplus from a previous fiscal year.

Section 21. The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Section 22. (a) Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

(b) The limitations of this section shall not apply to taxes imposed for the payment of

*principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this section.*

*Section 23. Notwithstanding other provisions of this constitution or other law, any taxpayer of the state, county, or other political subdivision shall have standing to bring suit in a circuit court of proper venue and additionally, when the state is involved, in the Missouri supreme court, to enforce the provisions of sections 16 through 22, inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit.*

*Section 24. (a) The provisions for voter approval contained in sections 16 through 23, inclusive, of this article do not abrogate and are in addition to other provisions of the constitution requiring voter approval to incur bonded indebtedness and to authorize certain taxes.*

*The provisions contained in sections 16 through 23, inclusive, of this article are self-enforcing; provided, however, that the general assembly may enact laws implementing such provisions which are not inconsistent with the purposes of said sections.*

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