

ion of Colorado

62

65

Art. X - Revenue

Sec. 20

ANNOTATION

A true business or occupational tax is not an income tax nor a tax on real property. The fact that the business necessarily involves and concerns realty does not change the nature of the tax. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961).

City tax limited to employee engaged in occupation is not income tax. A tax, limited to an employee engaged in an occupation, i.e., one who is performing such service for an employer as defined, within Denver for any period of time in the calendar month upon compensation, is not a flat income tax. *City & County of Denver v. Duffy Storage & Moving Co.*, 168 Colo. 91, 450 P.2d 339, appeal dismissed, 396 U.S. 2, 90 S. Ct. 23, 24 L. Ed. 2d 1 (1969).

Imposition of user fee by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to passengers picked up at airport does not constitute an illegal income tax. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Sales and use tax ordinance imposed on companies engaged in business of servicing coin-operated machines functioned as a constitutionally permissible sales tax and not as an income tax where the incidence of the tax fell on the customers of a retail business, notwithstanding companies' claim that tax burden unavoidably fell on them rather than purchasers, and where the companies qualified as retailers or vendors under the ordinance even though the users of the machines were customers of the location owners and not of the companies. *Apollo Stereo Music v. City of Aurora*, 871 P.2d 1206 (Colo. 1994).

Distinction between fee and tax based upon nature and function of the charge rather than by its label. Fees charged for use of public facility owned by municipal corporation are not taxes if purpose is to defray expenses for operating and improving facility and if fees are only imposed on users of facility. Taxes are not based on amount of use and the proceeds thereof are used to defray general municipal expenses. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Applied in *Rountree v. City & County of Denver*, 197 Colo. 497, 596 P.2d 739 (1979).

use of. On and after July 1, 1935, the registration fee, or other charge with respect to public highway in this state and the proceeds of other liquid motor fuel except aviation fuel, when administered, be used exclusively for the public highways of this state. Any other revenue collected exclusively for aviation purposes.

See L. 35, p. 328. L. 74: Entire section

1974 was December 20, 1974.

The roads of the state are, in effect, made the producers of a special fund, for the gasoline tax is a tax on motor fuel used in propelling vehicles along the highways. It amounts to an indirect tax for the use of the highway by motor vehicles. See *Johnson v. McDonald*, 97 Colo. 324, 49 P.2d 1017 (1935).

This special fund is not available for general purposes. See *Johnson v. McDonald*, 97 Colo. 324, 49 P.2d 1017 (1935).

This section removes excise taxes on motor fuel from availability for general state purposes. *City of Trinidad v. Haxby*, 136 Colo. 168, 315 P.2d 204 (1957).

No appropriation for road purposes necessary. Since this section sets aside and fixes the amount—the whole of the revenues from the taxes mentioned—as applicable to road purposes,

Section 19. State income tax laws by reference to United States tax laws. The general assembly may by law define the income upon which income taxes may be levied under section 17 of this article by reference to provisions of the laws of the United States in effect from time to time, whether retrospective or prospective in their operation, and shall in any such law provide the dollar amount of personal exemptions to be allowed to the taxpayer as a deduction. The general assembly may in any such law provide for other exceptions or modifications to any of such provisions of the laws of the United States and for retrospective exceptions or modifications to those provisions which are retrospective.

Source: L. 62: Entire section added, see L. 63, p. 1061.

Section 20. The Taxpayer's Bill of Rights. (1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

poses, no appropriation by the general assembly is necessary. *Johnson v. McDonald*, 97 Colo. 324, 49 P.2d 1017 (1935).

General assembly's power over funds realized is limited to authorizing their expenditure, and determining the policy of road construction, maintenance and supervision, within the constitutional limitations as to the use of such funds. *Johnson v. McDonald*, 97 Colo. 324, 49 P.2d 1017 (1935).

Privilege and access fees based upon access to an airport and charged to a car rental company do not violate this section. *Thrifty Rent-A-Car v. Denver*, 833 P.2d 852 (Colo. App. 1992).

Applied in *Watrous v. Golden Chamber of Commerce*, 121 Colo. 521, 218 P.2d 498 (1950).

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) **Election provisions.** (a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: "NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE." Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"

(4) **Required elections.** Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or

indirect district debt or other financial reserves pledged irrevocably and held

(5) **Emergency reserves.** To use reserve for 1993 1% or more, for 1994 its fiscal year spending excluding bond year's reserve.

(6) **Emergency taxes.** This subchapter taxes are prohibited. Emergency taxes even if later ratified by voters. Emergency conditions:

(a) A 2/3 majority of the member district board declares the emergency votes.

(b) Emergency tax revenue shall and shall be refunded within 180 days of emergency.

(c) A tax not approved on the next election shall end with that election month.

(7) **Spending limits.** (a) The maximum spending equals inflation plus the prior calendar year, adjusted for revenue changes determined by annual federal census decade to match the federal census.

(b) The maximum annual percentage equals inflation in the prior calendar year changes approved by voters after 1990.

(c) The maximum annual percentage equals inflation in the prior calendar year revenue changes approved by voters after 1990.

(d) If revenue from sources not excluded in dollars for that fiscal year, the excess voters approve a revenue change as a percentage of spending and 1991 property tax collection enterprise shall change district bases bonded debt shall increase, and retiring year spending and property tax revenue changes, reductions, (1) and (3) (c) refer amounts that are exceptions to, and no changes do not require a tax rate change.

(8) **Revenue limits.** (a) New taxes are prohibited. No new state real property taxes. Neither an income tax rate increase nor before the next tax year. Any income tax all taxable net income to be taxed at on tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative business personal property taxes.

(c) Regardless of reassessment frequency and may be appealed annually, with no or future sales by a lender or government sales and their sales prices kept as a percentage of property tax bills and valuation notices by the market approach to appraisal.

(9) **State mandates.** Except for pre-1990 local district by federal law, a local district

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indirect district debt or other financial obligation whatsoever without adequate present cash
reserves pledged irrevocably and held for payments in all future fiscal years.

(5) **Emergency reserves.** To use for declared emergencies only, each district shall
reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of
its fiscal year spending excluding bonded debt service. Unused reserves apply to the next
year's reserve.

(6) **Emergency taxes.** This subsection grants no new taxing power. Emergency prop-
erty taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7),
even if later ratified by voters. Emergency taxes shall also meet all of the following
conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local
district board declares the emergency and imposes the tax by separate recorded roll call
votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted,
and shall be refunded within 180 days after the emergency ends if not spent on the
emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration
shall end with that election month.

(7) **Spending limits.** (a) The maximum annual percentage change in state fiscal year
spending equals inflation plus the percentage change in state population in the prior
calendar year, adjusted for revenue changes approved by voters after 1991. Population shall
be determined by annual federal census estimates and such number shall be adjusted every
decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending
equals inflation in the prior calendar year plus annual local growth, adjusted for revenue
changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue
equals inflation in the prior calendar year plus annual local growth, adjusted for property tax
revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits
in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless
voters approve a revenue change as an offset. Initial district bases are current fiscal year
spending and 1991 property tax collected in 1992. Qualification or disqualification as an
enterprise shall change district bases and future year limits. Future creation of district
bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal
year spending and property tax revenue by the annual debt service so funded. Debt service
changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar
amounts that are exceptions to, and not part of, any district base. Voter-approved revenue
changes do not require a tax rate change.

(8) **Revenue limits.** (a) New or increased transfer tax rates on real property are
prohibited. No new state real property tax or local district income tax shall be imposed.
Neither an income tax rate increase nor a new state definition of taxable income shall apply
before the next tax year. Any income tax law change after July 1, 1992 shall also require
all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved
tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end
business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually
and may be appealed annually, with no presumption in favor of any pending valuation. Past
or future sales by a lender or government shall also be considered as comparable market
sales and their sales prices kept as public records. Actual value shall be stated on all
property tax bills and valuation notices and, for residential real property, determined solely
by the market approach to appraisal.

(9) **State mandates.** Except for public education through grade 12 or as required of a
local district by federal law, a local district may reduce or end its subsidy to any program

delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Source: Initiated 92: Entire section added, effective December 31, 1992, see L. 93, p. 2165. **L. 94:** (3)(b)(v) amended, p. 2851, effective upon proclamation of the Governor. **L. 95,** p. 1431, January 19, 1995. **L. 95:** IP(3)(b) and (3)(b)(v) amended, p. 1425, effective upon proclamation of the Governor, L. 97, p. 2393, December 26, 1996.

Editor's note: (1) Prior to the TABOR initiative in 1992, this section was originally enacted in 1972 and contained provisions relating to the 1976 Winter Olympics and was repealed, effective January 3, 1989. (See L. 1989, p. 1657.)

(2) (a) The Governor's proclamation date for the 1992 initiated measure (TABOR) was January 14, 1993.

(b) Subsection (4) of this section provides that the provisions of this section apply to required elections of state and local governments conducted on or after November 4, 1992.

Cross references: For statutory provisions implementing this section, see article 77 of title 24 (state fiscal policies); §§ 1-1-102, 1-40-125, 1-41-101 to 1-41-103, 29-2-102, and 32-1-803.5 (elections); §§ 29-1-304.7 and 29-1-304.8 (turnback of programs delegated to local governments by the general assembly); §§ 43-1-112.5, 43-1-113, 43-4-611, 43-4-612, 43-4-705, 43-4-707; and 43-10-109 (department of transportation revenue and spending limits); §§ 23-1-104 and 23-1-105 (higher education revenue and spending limits); §§ 24-30-202, 24-82-703, 24-82-705, and 24-82-801 (multiple fiscal-year obligations); §§ 8-46-101, 8-46-202, 8-77-101, 24-75-302, and 43-4-201 (provisions relating to individual funds and programs); and § 39-5-121 (property tax valuation notices); and, concerning the establishment of enterprises, §§ 23-1-106, 23-3.1-103.5, 23-3.1-104.5, 23-5-101.5, 23-5-101.7, 23-5-102, 23-5-103, 23-70-107, 23-70-108, and 23-70-112 (higher education, auxiliary facilities), part 2 of article 35 of title 24 (state lottery), part 3 of article 3 of title 25 (county hospitals), §§ 26-12-110 and 26-12-113 (state nursing homes), article 45.1 of title 37 (water activities), § 43-4-502 (public highway authorities), and § 43-4-805 (state bridge enterprise).

ANNOTATION

- I. General Consideration.
- II. Definitions.
- III. Requirement of Advance Voter Approval.
- IV. Spending and Revenue Limits.
- V. State Mandates.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Amendment One: Government by Plebiscite", see 22 Colo. Law. 293 (1993). For article, "Use of the Nonprofit Supporting Foundation to Assist Governmental Districts After Amendment 1", see 22 Colo. Law. 685 (1993). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part I", see 27 Colo. Law. 55 (April 1998). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part II", see 27 Colo. Law. 65 (May 1998). For article, "Taming TABOR by Working from Within", see 32 Colo. Law. 101 (July 2003). For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007). For comment, "Dismantling the Trojan Horse: Mesa County Board of County Commissioners v. State", see 82 U. Colo. L. Rev. 259 (2011). For article, "The Taxpayers Bill of Rights Twenty Years of

Litigation", see 42 Colo. Law. 35 (September 2013).

Interpretation of a constitutional provision is a question of law and an appellate court is not required to accord deference to a trial court's ruling in that regard. *Cervený v. City of Wheat Ridge*, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

In interpreting a constitutional amendment that was adopted by popular vote, courts must determine what the people believed the language of the amendment meant when they voted it into law. To do so, courts must give the language the natural and popular meaning usually understood by the voters. *Cervený v. City of Wheat Ridge*, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996); *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

In interpreting a constitutional provision, the court should ascertain and give effect to the intent of those who adopted it. In the case of this section, it is the court's responsibility to ensure that it gives effect to what the voters believed the amendment to mean when they accepted it as their fundamental law, considering the natural and popular meaning of the words used. *City of Wheat Ridge v. Cervený*, 913 P.2d 1110 (Colo. 1996).

A court will not assume that all legal drafting principles apply when interpreting an initiated constitutional amendment. The court will apply generally accepted principles according to their plain or common meaning in order to enact the intent of the voters in the same manner as it would otherwise seek to enact the intent of the legislature. *Bruce v. City of Colo. Springs*, 129 P.3d 988 (Colo. 2006).

The language in subsection (1) stating that the court should give "the preferred interpretation of this section" "shall reasonably restrain most the growth of government" is an interpretative guideline. A reviewing court may employ when it finds separately plausible interpretations of the language of this section. It is not a refutation of the presumption of constitutionality if there is a reasonable doubt standard. As the presumption of constitutionality applies to a statute challenged under this section, the beyond a reasonable doubt showing is necessary to overcome that presumption. *Mesa County Bd. of Comm'rs v. State*, 203 P.3d 519 (Colo. 2006).

Where multiple interpretations of a provision of this section are equally supported by the text of that section, a court should choose the interpretation which it concludes would impose the greatest restraint on the growth of government; however, the proponent of an interpretation has the burden of establishing that the proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. *City of Boulder v. City of Boulder*, 885 P.2d 215 (Colo. App. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1111, 151 L. Ed. 2d 1076 (1995); *Nicholl v. E-470 Hwy. Auth.*, 896 P.2d 859 (Colo. 1995); *Healthone, LLC v. City of Lone Tree*, 19 P.3d 236 (Colo. App. 2008).

And this interpretive guide only applies when the text equally supports multiple interpretations. *Colo. Union of Taxpayers v. City of Aspen*, 2015 COA 162, ___ P.3d ___.

A court should require a significant fiscal burden on the state only if the text of the section leaves no other choice. Courts have consistently rejected readings that would impair basic government functions or cripple the government's ability to provide services. *Bar Ritter*, 196 P.3d 238 (Colo. 2008).

Amendment's objective is to prevent governmental entities from enacting taxing and spending increases above its limits without voter approval. *Campbell v. Orchard Mesa Dist.*, 972 P.2d 1037 (Colo. 1998).

This section requires voter approval of certain state and local government tax increases and restricts property, income, and sales taxes. *Submission of Interrogatories on S.B. 19-74*, 852 P.2d 1 (Colo. 1993).

And acts to limit the discretion of government officials to take certain actions pertaining to taxing, revenue, and spending in the absence of voter approval. *Prop. Tax A*