

'Ban the tax' vote looms Nov. 4 in Tennessee

By The Commercial Appeal
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Thirteen years after protesters stormed the state Capitol over a state income tax that lawmakers were considering, Tennesseans will decide Nov. 4 whether to permanently ban any new state or local personal income or payroll tax in Tennessee.

The third of the four amendments proposed for the Tennessee Constitution on the general election ballot would add an explicit prohibition on enactment of a general income tax on wages and salaries by the state and local governments. The operative phrase in Amendment 3 says "the Legislature shall not levy, authorize or otherwise permit any state or local tax upon payroll or earned personal income or any state or local tax measured by payroll or earned personal income ..."

It also says the prohibition does not apply to "any tax in effect on January 1, 2011, or adjustment of the rate of such tax." That provision allows continuation of the state's existing personal income tax on certain stock dividend and interest income.

If Amendment 3 is ratified, neither the state nor city and county governments could tax earned income like wages and salaries but the state could continue taxing dividends and interest.

If Amendment 3 is rejected, the issue of a state general income tax is left ambiguous in the constitution, which now provides that "The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds ..." The Tennessee Supreme Court has ruled twice, in 1932 and 1960, that a general income tax is unconstitutional because the constitution doesn't explicitly allow it.

But, the legislature has considered a state income tax three times since the court's last ruling -- in 1985, 1991 and the sessions of 1999 to 2002. Three state attorneys general issued legal opinions saying they believed the income tax schemes being considered might be upheld in court because the constitution does not explicitly prohibit a general income tax.

The legislature voted on an income tax plan only once during those three debates -- in 2001, when a 4 percent income tax with a \$7,000 per person exemption was coupled with a reduced sales tax rate and abolishment of the sales tax on grocery food. That plan fell five votes short of passage in the House. The raucous protest was under way outside. The Senate never voted on the plan.

A year later, lawmakers pressed for more revenue and ended up raising the state sales tax by a cent on the dollar, to 7 percent, leaving Tennessee with the highest combined state and local sales tax rates in the nation, the conservative Tax Foundation reported on Sept. 17. (The foundation also ranks Tennessee's overall state and local tax burden fifth-lowest among the states.)

Since then, consideration of an income tax has been off the table as politically toxic to both Democrats and Republicans. It is especially unlikely under the GOP super majorities in the statehouse.

The existing constitution is more explicit on local income taxes: "The General Assembly shall not authorize any municipality to tax incomes, estates, or inheritances ..."

State Sen. Brian Kelsey, R-Germantown, sponsored the resolution putting Amendment 3 on the ballot and heads the "Yes on 3" committee urging its ratification. Kelsey and other supporters want the amendment to permanently ban a state income tax.

"Not having a state income tax has already brought jobs to Tennessee and being able to tell employers we'll never have one is going to bring even more jobs," Kelsey said. "I'm confident that as long as the people of Tennessee know what the amendment does, it will pass. But the ballot language is somewhat confusing and that's why it's important to get the word out there, voter by voter."

Tennessee is one of eight states without a general personal income tax but is one of two of those, along with New Hampshire, that do tax dividend and interest income. Connecticut was the last state to enact an income tax on wages and salaries, in 1991.

Tennessee is already phasing out its inheritance, estate and gift taxes, and there is an effort under way to eliminate the tax on dividends and interest.

Dick Williams of Nashville, who heads "Citizens for Fiscal Sanity" against Amendment 3, says no income tax is on Tennessee's horizon but banning it in the constitution would limit the options of future generations and lead to higher taxes on sales and property.

"This is not a referendum on whether or not to have an income tax or a payroll tax but it is a question on whether we should enshrine in the constitution a limitation on future decisions that voters may feel the need to decide. It may be an emergency or something," Williams said.

"We believe that passing this amendment will inevitably lead to either higher sales taxes or higher business taxes, and on the local level, higher property taxes. If things got serious and this amendment got enshrined, possibly a statewide property tax could be considered. We think it's clear that like everything else, governmental costs will rise and they won't be offset by economic growth alone."

A study released last week by Standard & Poor's concludes that rising income inequality has a stronger negative effect on states most reliant on sales taxes, like Tennessee, compared with those more dependent on income taxes. It says



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Poll
Should Tennessee permanently ban a personal income tax?

Yes

No

vote

results

ABOUT THIS SERIES

Stories on the four constitutional amendments Tennessee voters will decide on Nov. 4 are the work of the Tennessee News Network, a consortium of the state's largest newspapers. Journalists from the Chattanooga Times Free Press, the Memphis Commercial Appeal, the Knoxville News Sentinel and The Tennessean in Nashville reported, wrote and edited the stories.

SUNDAY

- **Amendment 1:** Concerning abortions

MONDAY

- **Amendment 2:** Concerning judicial elections

TUESDAY

- **Amendment 3:** Concerning a ban on a state income tax

WEDNESDAY

- **Amendment 4:** Concerning lotteries

TEXT OF AMENDMENT 3

Shall Article II, Section 28 of the Constitution of Tennessee be amended by adding the following sentence at the end of the final substantive paragraph within the section:

Notwithstanding the authority to tax privileges or any other authority set forth in this Constitution, the Legislature shall not levy, authorize or otherwise permit any state or local tax upon payroll or earned personal income or any state or local tax measured by payroll or earned personal income; however, nothing contained herein shall be construed as prohibiting any tax in effect on January 1, 2011, or adjustment of the rate of such tax.

Yes

No

affluent people save a greater share of their income and spend it on untaxed services, meaning that states are unlikely to see much of an increase in sales tax collections based on the financial gains among this group.

Dr. John Gnuschke, director of the University of Memphis Bureau of Business and Economic Research, says he believes "restricting tax flexibility ... is a bad idea.

"It will limit future options for state legislative leaders and that is not a good idea in a state that struggles to maintain a balanced budget and still provide high-quality public services. The passage would increase the burden on sales and property taxes, the principal sources of revenue for state and local areas. States that have income taxes have revenues that grow as the economy grows and allow government to respond to the demand for public services. Practical limitations on property and sales tax rates are already being faced in many areas of the state," Gnuschke said.

Kelsey said he believes the amendment would "help Tennessee be fiscally responsible" by limiting new spending.

Gov. Bill Haslam said he'll vote for Amendment 3. "I'm not certain there's a huge impact because I don't think there's going to be an income tax in Tennessee regardless of whether the amendment passes or not," he said.

"The bottom line is we don't have one now, I don't see us having one and I predict the amendment passes as well."

Economist Arthur Laffer, the former supply-side adviser to President Ronald Reagan who now lives in Murfreesboro, said the amendment would "ensure the state remains economically competitive" because, he said, states with no income taxes "average higher job growth rates than the national average."