

September 25, 2017

Pinal County Board of Supervisors  
P.O. Box 827  
Florence, AZ 85132

Dear Supervisors,

I am writing with regard to the tax that Pinal County has proposed in Propositions 416 and 417. We are concerned that the language in the Resolutions adopted by the Pinal County Board of Supervisors on June 21, 2017, appears to contradict the language in the ballot pamphlet. We are also concerned that the proposed tax appears not to be legally authorized.

First, the language of the actual Resolution passed by the County Board of Supervisors, states that the tax would be imposed on “every person engaging or continuing in the business of selling tangible personal property at retail.” Retail is the only classification identified in the Resolution and “tangible personal property” is the only class of goods to which the assessment specifically applies. Under the plain language of the Resolution, the tax would not apply to classifications other than retail or goods or services other than tangible personal property.

Yet, the ballot pamphlet claims (on pages 14 and 15) that if Proposition 417 is adopted, it will impose a tax on certain “business classifications,” which it identifies as: transportation, utilities, telecommunications, pipelines, private car lines, job printing, restaurants, and so forth. In short, the pamphlet lists fifteen different business tax classifications that would be subject to the tax, as opposed to the retailers mentioned in the Resolution.

We are concerned that voters have been misinformed by the fact that the description in the pamphlet does not align with the text of the Resolution. Additionally, we are concerned that the County would exceed its lawful authority if the intent of County administrators is indeed to assess the tax against a broad range of classifications that was not approved by the Supervisors.

Second, the proposed tax would not apply to transactions of more than \$10,000—presumably so that it would exempt businesses that sell houses or cars. But Arizona law does not permit this. The County’s authority to adopt such a tax is granted by A.R.S. 42-6106, which does not allow the County to adopt special classifications and exemptions.

Although Section 42-6106(C) does allow a county to “collect [a] tax at a variable rate if the variable rate is specified in the ballot proposition,” a complete exemption of transactions above \$10,000 is not a “variable rate.” A “variable rate” is a rate that changes in accord with some external fluctuation, such as market conditions, interest rates, etc. See Black’s Law Dictionary 813, 1553 (6th ed. 1990). For instance, federal regulations define a “variable rate” as a rate that depends on a multiplier, or an average. 26 C.F.R. § 1.860G-1(a)(3).

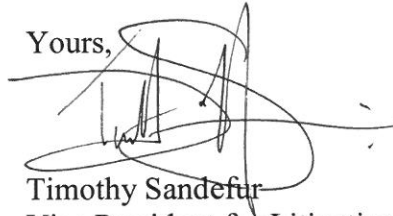
But zeroing out all transactions over a certain cap is not a “variable rate.” It is simply an arbitrary cap. Moreover, it conflicts with the rest of Section 42-6106, which says that any county excise tax “shall be levied and collected at a rate of...” and then specifies the percentage rates a county must apply. In other words, the law does not allow a county to create a new tax classification by calling zero a “variable rate.”

In order to prevent the possibility of a voter or taxpayer lawsuit, we request that the Proposition be immediately removed from the ballot until such time as the County passes a new resolution that is properly and accurately publicized by County administrators. Should the Proposition pass in its current form, it would be subject to litigation.

Our staff is available at any time to discuss the legal issues raised by this Proposition and ballot question.

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that the steps requested above have been accomplished.

Yours,

A handwritten signature in black ink, appearing to read 'Timothy Sandefur', is written over the printed name and title below it. The signature is stylized and somewhat illegible due to overlapping lines.

Timothy Sandefur  
Vice President for Litigation