Initiative Measure No. 1060

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SECRETARY OF STATE
STATE OF WASHINGTON

AN ACT Relating to creating the Washington state sovereignty and federal tax escrow account act of 2010; reenacting and amending RCW 43.84.092; adding a new chapter to Title 83 RCW; and creating a new section.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. This act may be known and cited as the Washington state sovereignty and federal tax escrow account act of 2010.

NEW SECTION. Sec. 2. By this act the people of the state of Washington intend to: Create the federal tax escrow account in the state treasury to provide that moneys collected by the state for payment to the federal government are paid into the account; provide that any private person liable for a federal tax must pay the tax into the account; provide that should the federal government, including, but not limited to, the federal courts, act toward the state of Washington or any of its citizens in a manner deemed unconstitutional by the Washington state legislature, the state treasury must withhold a certain portion of the funds due the federal government; provide that if the federal government takes any punitive action against the state in any manner for failure to comply with a federal statute or directive of any kind that the Washington state legislature deems unconstitutional, the state treasury must withhold from payment a certain portion of the funds due the federal government; provide sanctions for failure to comply with such provisions; provide that state officials must comply with such provisions without regard to any action taken by the federal government; provide for a special session of the Washington state legislature; provide that unconstitutional measures taken by the federal authorities constitute an action against the state of Washington and must be met with all necessary measures to safeguard the sovereignty of the state and the constitutional rights of its citizens; provide for retroactive application; provide for the expenditure of funds withheld from the federal government; provide for other matters relative to the foregoing; provide an effective date; and repeal all conflicting laws.

NEW SECTION. Sec. 3. (1) The people of the state of Washington find that the Constitution of the United States is a compact between the people of the sovereign states creating a general or federal government as their agent and endowing it with only enumerated powers. That the general or federal government is not, and can never be, the sole and exclusive authority in determining what powers were enumerated, or delegated, and what powers were reserved to the states and to the people thereof.

(2)(a) The tenth amendment to the Constitution of the United States states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

(b) The people of the state of Washington find that the tenth amendment to the Constitution of the United States defines the entire scope of federal power as being limited to that specifically delegated in the Constitution and no more.

(3) The people of the state of Washington find that the congress of the United States has the power to lay and collect taxes pursuant only to clause 1 of Section 8 of Article 1; and clauses 4 and 5 of Section 9 of Article 1 of the Constitution of the United States.

(4) The people of the state of Washington find that the federal government, its agencies or agents, including the congress of the United States, does not have the power under the Constitution of the United States to withhold from the states the benefits of those taxes as stated in subsection (2)(b) of this section by the use of federal mandates or other means that fall outside the scope of the powers delegated to the federal government by the Constitution of the United States.

(5) In consideration of the continuing unconstitutional federal mandates, directives, laws, court orders, and other usurpations that withhold the benefits of those taxes as stated in subsection (2)(b) of this section to the states, the state of Washington reasserts its claim of sovereignty pursuant to the original compact between the several states and the tenth amendment to the Constitution of the United States.

NEW SECTION. Sec. 4. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer tax" means any tax imposed by the federal government on any beer, liquor, wine, or similar alcoholic beverage, tobacco, gasoline, or any other consumer goods.

(2) "Excise tax" means any tax restricted by Article II, section 40 of the state Constitution.

(3) "Federal tax escrow account" means the federal tax escrow account created in section 5 of this act.

(4) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities.

NEW SECTION. Sec. 5. (1) The federal tax escrow account is created in the state treasury. All federal tax moneys collected by the state of Washington on behalf of the federal government, or any of its agencies or agents, must be deposited by the state treasurer into the federal tax escrow account.

(2) The state treasurer, on a quarterly basis, must disburse the funds to the appropriate federal recipient if the Washington state legislature deems that the federal government, and its agencies or agents, have acted in a constitutional manner toward the state of Washington or its citizens. If, as a result of state action taken

pursuant to this chapter, the federal government imposes or mandates any financial sanctions or penalties or otherwise acts in a punitive manner toward the state of Washington and its citizens, the state treasurer must withhold from payment all or part of the quarterly disbursement that otherwise would be disbursed or transferred to the appropriate federal recipient.

(3) Funds that are withheld by the state treasurer from the federal recipient must be transferred to and deposited in the state general fund for general use.

NEW SECTION. Sec. 6. (1) Any person liable for any federal excise or consumer tax must remit such tax when due along with a federal taxpayer identification number, if applicable, to the state treasurer for deposit into the federal tax escrow account created in section 5 of this act. A social security number, according to statute, is not to be defined as a federal tax identification number.

(2) All moneys collected under this section must be transmitted to the state treasurer, who, as a fiduciary agent, must credit such funds to the federal tax escrow account on behalf of the person who remitted the tax.

(3) The state treasurer must submit to the federal internal revenue service, or other such tax-collecting agencies that the congress of the United States may from time to time establish, the names and tax identification numbers, where applicable and excluding social security numbers, of, and the amounts deposited by, persons liable for any federal excise or consumer tax so that the federal internal revenue service can credit the state of Washington's taxpayers for federal tax obligations.

(4) Upon the effective date of this act, no federal agent or agents may operate within the borders of the state of Washington, as described in section 7 of this act, for the purpose of collecting taxes or of exacting punitive measures because of the exercise by the state of Washington of any provision or provisions of this chapter.

(5) Except as provided in section 5(2) of this act, the state treasurer must transfer at the end of each quarter the moneys held in the federal tax escrow account, less any interest earned on the deposit, to the appropriate federal recipient in payment of the tax
obligations of those persons who remitted the tax funds to the state treasurer.

(6) If the federal government, or any of its agencies or agents, impose sanctions on or take punitive actions of any sort against the state of Washington for failing to enact legislation called for by a mandate from the federal government, or any of its agencies or agents, a vote must be taken by the state legislature as to the constitutionality of the sanctions or punitive actions. By a simple majority vote in each house of the state legislature, if the federal government, or any of its agencies or agents, is found to be operating beyond the scope of its constitutionally delegated powers, and therefore unlawfully, the state treasurer must be notified in writing within two days by the attorney general of the vote of each house of the state legislature, and the state legislature must instruct the state treasurer to carry out the procedure specified in section 5(2)

of this act.

(7) It must be determined by a simple majority vote in each house of the state legislature when the federal government, or its agencies or agents, have properly rescinded or removed any sanctions or have ceased punitive actions against Washington state and its citizens. Until both houses of the state legislature have determined by a simple majority vote that the federal government, or its agencies or agents, are operating within the scope of its constitutionally delegated powers, and therefore lawfully, the state treasurer must disburse or transfer no funds from the federal tax escrow account to the federal tax recipient.

(8) Any person liable for any federal excise or consumer tax who fails to forward the federal tax moneys to the state treasurer is subject to penalties assessed according to the applicable state laws.

NEW SECTION. Sec. 7. (1) The governor, members of each house of the state legislature, judges, the attorney general, the secretary of state, the state treasurer, the state auditor, and all other state officers and employees must implement the provisions of this chapter regardless of any sanctions, threats, punitive actions, federal court orders, or other measures brought to bear against them by any and all federal authorities and their agencies or agents.

(2) If the federal government, or its agencies or agents, impose any sanctions on or execute any punitive action against the state or any of its citizens while the state legislature is not in session, the governor must call the state legislature into special session for the purpose of implementing the appropriate provision of this chapter.

(3) Any action by the federal government, or its agencies or agents, including the president of the United States, the congress of the United States, and the federal courts, against any person in Washington state for compliance with the provisions of this chapter is considered a hostile and unconstitutional action against Washington state and its citizens, and the state of Washington will by all necessary measures act to preserve its sovereignty.

(4) The Washington state legislature, by a simple majority vote in each house, must determine how the moneys transferred from the federal tax escrow account to the state general fund, including accrued interest, are to be used for the benefit of the people of Washington state. These moneys must be used only for the benefit of the people of Washington state.

Sec. 8. RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and 2009 c 451 s 8 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is ((~~hereby~~)) established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to

chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, <u>the federal tax escrow account,</u> the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation

account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State

University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 9. This chapter applies to all federal actions within the state of Washington, including, but not limited to, the collection of federal excise and consumer taxes upon the date which it is enacted. Because the Constitution of the United States has been the fundamental law of the land since its ratification by the requisite nine states in 1788, this chapter must be enforced retroactively to repeal any unconstitutional federal laws, mandates, edicts, and court orders that have been imposed on the state of Washington and its citizens.

NEW SECTION. Sec. 10. The provisions of this chapter control in the event of a conflict between the provisions of this chapter and other state or local laws and regulations.

NEW SECTION. Sec. 11. Any federal law, rule, order, or other act by the federal government violating the provisions of this chapter is invalid in this state, is not recognized by and is specifically rejected by this state, and is considered as null and void and of no effect in this state.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. Sections 1 through 7 and 9 through 11 of this act constitute a new chapter in Title 83 RCW.

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