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OPINION NO. 2009-001

Honorable Kit Jennings  
Wyoming State Senator  
Wyoming State Capitol  
Cheyenne, Wyoming 82002

Dear Senator Jennings:

**QUESTION #1:** Does Article 3, Section 33 of the Wyoming Constitution require all bills dealing with taxes, including bills that decrease taxes or are revenue neutral, to be introduced in the House of Representatives?

**ANSWER:** No. See DISCUSSION #1, below.

**QUESTION #2:** Does Article 3, Section 33 of the Wyoming Constitution require the bill entitled "property tax deferral program" to be introduced in the House of Representatives?

**ANSWER:** No. See DISCUSSION #2, below.

## **DISCUSSION OF QUESTION #1**

The first question is whether Article 3, Section 33 of the Wyoming Constitution requires all bills dealing with taxes, including bills that decrease taxes or are revenue neutral, to be introduced in the House of Representatives. As you are aware, the origination clause at Article 3, Section 33 provides:

All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in case of other bills.

A similar question was addressed in Formal Opinion No. 86-005 issued by this office in 1986. The question presented in the 1986 Opinion was whether a bill related to taxation could be introduced in the Senate without violating the origination clause of the Wyoming Constitution. *See* 005 Op. Att’y Gen. (Wyo. Feb. 13, 1986). The 1986 Opinion concluded that all bills dealing with taxation must be introduced in the House regardless of their fiscal impact. The Opinion relied on *Armstrong v. United States*, 759 F.2d 1378 (9th Cir. 1985), to support its conclusion.

In *Armstrong*, the issue was whether the Tax Equity and Fiscal Responsibility Act (“TEFRA”) violated the origination clause. TEFRA originated in the House as a bill to decrease taxes. The Senate struck the entire text of the bill, other than the enacting clause, and replaced it with language to increase taxes. Congress ultimately passed the Senate version. TEFRA was challenged as a violation of the origination clause because it was introduced as a “bill for raising revenue” in the Senate. *Id.* at 1381.

The United States Court of Appeals for the Ninth Circuit briefly discussed the requirement that “bills raising revenue” must originate in the House, however, the holding of the court focused on the power of the Senate to amend the bill. *Id.* at 1381. Relying on the second half of the origination clause, i.e., “but the Senate may propose or concur with Amendments as on other Bills”, the court stated:

[O]nce a revenue bill has been initiated in the House, the Senate is fully empowered to propose amendments, even if their effect will be to transform a proposal lowering taxes into one raising taxes. We therefore conclude that the Senate did not exceed its authority under the origination clause when it proposed the extensive amendments that ultimately became TEFRA. (emphasis added)

*Id.* at 1382.

The 1986 Opinion’s reliance on *Armstrong* raises several concerns. *Armstrong* offers little guidance on what constitute “bills for raising revenue.” The specific question in the 1986 Opinion was whether a bill was a “bill for raising revenue,” and therefore subject to the origination clause. Thus, reliance on *Armstrong* must be limited to the relevant issue related to the Senate’s power to amend a revenue bill.

Second, *Armstrong* stands for the proposition that the United States Senate has plenary power to amend any revenue bill once it originates in the House, even to the point of changing its original purpose. This is distinguishable from what is allowed by the

Wyoming Constitution. Although the origination clause of the United States Constitution appears to be nearly identical to that of the Wyoming Constitution,<sup>1</sup> it is important to note the Wyoming Constitution imposes additional restrictions that limit the Senate's power to amend bills. More specifically, Article 3, Section 20 of the Wyoming Constitution provides:

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

The United States Constitution does not impose a similar restriction, and therefore, the authority of the United States Senate to amend revenue bills is much broader than that of the Wyoming Senate. The Wyoming Senate cannot propose an amendment that would alter or amend the original purpose of a bill. Therefore, reliance on *Armstrong* must be limited due to the presence of other restrictions in the Wyoming Constitution that are not present in the United States Constitution.

Finally, since its enactment, TEFRA has repeatedly been challenged as a violation of the origination clause. The United States Supreme Court has not decided a case where TEFRA was at issue. However, the Court has limited the scope of revenue bills to those bills whose primary purpose is to raise revenue for the general expenses or obligations of the government. See DISCUSSION #2, below.

For these reasons, *Armstrong* has less relevance to the interpretation of the origination clause of the Wyoming Constitution. To the extent that Formal Opinion No. 86-005 is construed to require all bills related to taxes, including bills that decrease taxes or are revenue neutral, be introduced in the House, it is hereby overruled.

## DISCUSSION OF QUESTION #2

The second question is whether Article 3, Section 33 of the Wyoming Constitution requires the bill entitled "property tax deferral program" to be introduced in the House of Representatives. The answer turns on the meaning of "bills for raising revenue" as used in the origination clause of the Wyoming Constitution.

The Wyoming Supreme Court has not decided a case where "bills for raising revenue," for purposes of the origination clause, was at issue. However, there is some guidance on this issue from the United States Supreme Court. The Court has stated the practical effect of the federal origination clause is well settled and confined to bills to levy taxes in the strict sense of the words. The federal origination clause does not extend to

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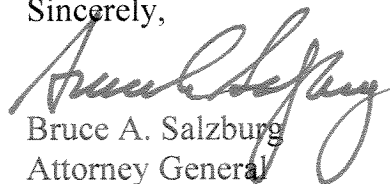
<sup>1</sup> "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. CONST. art. I, § 7, cl. 1.

bills that are revenue neutral. *Twin City Nat'l Bank of New Brighton v. Nebeker*, 167 U.S. 196, 202 (1897).

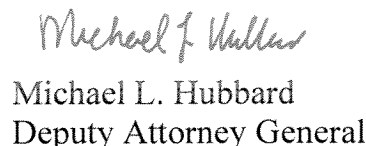
A review of U.S. Supreme Court cases reveals that the Court rarely holds that a revenue law violated the origination clause. For example, in *Twin City Bank*, a bill to impose a tax on bonds for the purpose of providing a national currency based on United States bonds was not a revenue bill because the primary purpose was not to create revenue. *Id.* at 203. In *Millard v. Roberts*, 202 US 429, 437 (1906), a bill to impose a tax on property for the purpose of raising revenue for railroad construction was not a revenue bill because the revenue was not used to satisfy the general expenses and obligations of the government. Finally, in *United States v. Munoz-Florez*, 495 U.S. 385, 401 (1990), a bill requiring courts to impose a "special assessment" on any person convicted of a federal offense, where a portion of such funds would be used to compensate victims and punish offenders, was not a revenue bill because the revenue was not used to support the government generally. Thus, as these decisions demonstrate, the Court has limited the scope of revenue bills to those bills whose primary purpose is to raise revenue for the general expenses or obligations of the government. We believe the Wyoming Supreme Court would apply this same principle.

The bill in question would amend the requirements for eligibility in the property tax deferral program. Currently, the program allows qualified households to defer payment of property taxes. The bill would increase the maximum household income allowed to participate in the program. As such, the bill would decrease taxes and revenue. Therefore, the primary purpose of the bill is not to raise revenue for the general expenses or obligations of the government. Furthermore, a bill that affects or regulates the classification, collection or enforcement of taxes is generally not considered a revenue bill. F.G. Madara, Annotation, *Application of constitutional requirement that bills for raising revenue originate in lower house*, 4 A.L.R. 2d. 973, 986 (1949). In conclusion, the bill entitled "property tax deferral program" is not a "bill for raising revenue," and therefore can be introduced in the Senate without violating the origination clause.

Sincerely,



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