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The Missing Reform: Regulatory Tax Credits

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EXECUTIVE SUMMARY

Across the country, people seeking work in harmless occupations, including barbers, cosmetologists, dental hygienists, and even frog farmers, are forced to spend thousands of dollars and otherwise productive hours complying with regulations. The cost of state-imposed regulations in California alone was recently estimated at nearly $500 billion. Federal regulations have been estimated to cost $1.75 trillion per year, which is roughly 14 percent of total national income. All of these incredibly costly regulations slow economic activity and prevent the creation of jobs and wealth. Unfortunately, efforts to rein in excessive regulations have proven inadequate.

The fundamental problem is that government has little reason to stop overregulating because it loses little or nothing from doing so. But there is a powerful way to give government the missing incentive it needs—the regulatory tax credit. This credit would allow taxpayers to reduce their taxes in an amount equal to the cost of complying with excessive regulation. That single change would force policymakers to carefully consider the costs of new regulations and ensure they are truly designed to protect public health and safety.

The regulatory tax credit would also be a powerful job-creation tool. By discouraging overregulation and the costs associated with it, businesses would be freed to invest and hire. In today's tough economy, the regulatory tax credit cannot come soon enough.

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Introduction

American governments regulate too much. Local, state, and federal regulations cost trillions of dollars every year. Regulations make it more difficult to start businesses, hire workers, and provide goods and services customers want. There is little or no measurable gain for this economic pain because free markets ordinarily furnish safe, high-quality goods and services through competition between and among consumers and producers. Under normal circumstances, all that is needed for individuals and society to flourish is a framework of basic laws that prohibit violence and fraud, enforce contracts, and require compensation for harm caused by wrongdoing. For this reason, it is counterproductive to fetter consumers and entrepreneurs with legal chains requiring them to secure government permission to transact business, create jobs, generate wealth, and build a higher, healthier standard of living—all outcomes that excessive regulation slows or prevents.

Unfortunately, government often does not understand or act upon this economic fact. There have been attempts at regulatory reform, especially measures aimed at property rights regulations, but these have largely failed to have the desired effect. Moreover, they leave unreformed the vast body of regulations that restrict economic activity outside of a particular use of real estate.

The regulatory tax credit would align government's interest in tax collections with the economy's need for reasonable regulation by offering tax credits for the cost of excessive regulations.

The regulatory tax credit goes after the root of the problem by giving government the incentive not to overregulate. The tax credit would align government's interest in tax collections with the economy's need for reasonable regulation by offering tax credits for the cost of excessive regulations. This change would give government a direct financial incentive to minimize excessive regulation, and it would provide just compensation to citizens who have been deprived of their rightful liberty and property.

Property Rights Remain Under Siege Despite Proposition 207

Property rights advocates have long known that excessive regulation can be discouraged by hitting government in the pocketbook, as reflected by the American constitutional tradition that requires the government to give property owners just compensation when it seizes their property. The practical problem with relying exclusively upon this tradition to stem excessive regulation is that just compensation is typically not available in circumstances where the government, instead of seizing the property, substantially regulates away the freedom to use, develop, or enjoy one's property. Current court decisions will not require the government to provide compensation unless *almost all* of the property's market value or economically beneficial uses are destroyed by regulation. Restricting only one particular economically beneficial use or destroying even as much as half of the market value of property through regulation, for example, typically will not be enough of a property rights violation for courts to award compensation to property owners under state or federal constitutional guarantees.[1]

That's a primary reason why property rights advocates fought for the enactment of Proposition 207 in Arizona. Proposition 207 was intended not only to block the abuse of the government's power to seize private property, called the power of eminent domain, but also to require the government to pay just compensation when regulations prohibit peaceful and productive uses of land. The goal was to stop the government from using zoning laws to restrict property rights and destroy property values. Unfortunately, reforms like Proposition 207 do not sufficiently rein in excessive regulation. Local governments simply ignore the law or they use creative lawyering, ambiguities, loopholes, or implied threats to delay and deny property owners justice.

In June 2007, for example, Tucson amended its building code to include extensive demolition regulations in a designated historic area. It did so under political pressure to prevent developer Mike Goodman and others from buying run-down properties near the University of Arizona, and replacing them with new student housing—even though the new housing would meet or exceed existing zoning requirements and building standards. Because the demolition regulations were placed in the city's building code and promoted as a means of protecting the value of historic properties, rather than directly imposed as land use restrictions in its zoning code, Tucson argued that the regulations did not restrict property uses, that they were aimed at promoting public safety, and that their actual affect was to enhance the value of the property. Although Tucson lost the battle and was forced to repeal its demolition regulations after the Goldwater Institute challenged the law, it is not clear yet that Tucson will lose the war. Tucson, Mesa, and Flagstaff have since adopted or are contemplating "historic overlays," which impose various restrictions on the renovation and use of properties deemed to fall within a historic neighborhood.[2] Advocates of historic overlays declare that these restrictions somehow increase property values and thus do not violate Proposition 207.

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Local governments can make these outlandish claims because they enjoy a huge advantage when they are challenged. Because of their vast resources (funded by taxes), they can outlast most private citizens and businesses in expensive litigation. Moreover, civil service-protected bureaucrats have a long memory. A singular victory for a property owner or a business against excessive regulation may only serve to prompt vengeful civil servants to dish out unfavorable treatment elsewhere. Even if the property owner is likely to win a lawsuit for just compensation due to land-use regulations, the owner must still chase the government for a check, which in today's fiscal nightmare is only a guarantee that justice will be further delayed. It is all too reasonable for property owners to "go along to get along" rather than fight to vindicate their rights under robust property rights laws like Proposition 207.

Government knows that property owners face this conundrum. And local governments do not hesitate to leverage the threat that is implicit whenever a property owner contemplates picking a fight with City Hall. As a condition of processing zoning and permitting applications, for example, Pima County and the City of Scottsdale often require property owners to relinquish their protections under Proposition 207, both for themselves and all future owners of their property.[3]

Of course, reforms like Proposition 207 are far better than nothing. But even when excessive regulation of private property is deterred, reforms like Proposition 207 simply do not address and cannot prevent excessive regulation of peaceful and productive economic activities unless they are directly connected to the use of real estate. And the economic damage caused by excessive economic regulations that are untouched by property rights protections is significant.

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Economic Liberty Is Still a Dream Deferred

In September 2010, the Small Business Administration reported that economic regulations imposed by the federal government cost *$1.75 trillion* per year, or about 14 percent of total national income.[4] The cost of state-imposed regulations *in California alone* was estimated at "$492.994 billion, which is almost five times the State's general fund budget, and almost a third of the State's gross product."[5] Around the country, people seeking to join harmless occupations, such as barber, cosmetologist, dental hygienist, or even frog farmer, are forced to spend thousands of dollars and otherwise productive hours complying with licensing regulations.[6] All of these regulations slow or block economic activity and prevent the creation of jobs and wealth at a time when millions are looking for work.

An all-too-typical experience is that of Raymond Steeves, co-owner of Three Dudes Quilting in Maricopa County, Arizona. In order to hang a sign advertising his store in an established shopping mall, Steeves reported it took four months of regulatory processing by the county and cost him $800. As part of the process, and for no apparent reason, the county required him "to provide a map of the entire shopping center certified by an architect" and to furnish a "certified artist drawing of the inside of his building."[7] When this experience is multiplied over the tens of thousands of businesses in every state that need basic signage to market themselves, it is readily apparent that regulations needlessly drain the economy of valuable resources.

The picture painted by the economic impact of excessive regulation is made even worse by the fact that numerous peer-reviewed economic studies show little or no benefit from proactively regulating ordinarily peaceful and productive businesses and occupations.[8] Public health and safety is served as well or better, and with far less economic damage, when entrepreneurs are left free to compete in markets regulated only by basic laws that prohibit violence and fraud, enforce contracts, and provide for compensation when wrongful behavior causes harm.

The Missing Reform

In short, excessive regulation not only continues to deprive people of their property rights despite robust reforms like Proposition 207, but excessive regulation of the freedom to earn an honest living, build a thriving business, and bring goods to market—economic liberty—has largely continued unabated. Worse, there is no sign government recognizes the needless destructiveness of excessive regulation. Year after year, the Goldwater Institute's "Legislative Report Card" assessments show that the average legislator votes to advance more regulation rather than less.[9]

It is clear that a more powerful and comprehensive reform than what has been tried in the past is needed to deter excessive regulation and to compensate its victims. Even more important, the reform must address the fact that government officials do not appreciate the costs and injustices of excessive regulation. The ideal reform must not only stop injustice when invoked, but also inform and incentivize government officials to act more responsibly. Fortunately, just such a reform is possible.

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Tax credits should be given to property owners, individuals, and businesses for the cost of regulation. Unlike reforms such as Proposition 207, which require citizens to mount expensive lawsuits to vindicate their rights and chase the government for a check, a tax credit would immediately hit the government in the pocketbook. It would put the burden on the government to challenge the legitimacy of the citizen's claim for just compensation, rather than place the burden on the victim of regulatory overreach to challenge the legitimacy of the government's action. And this reversal of the burden—from the citizen to the government—would dramatically increase a government's incentive to avoid excessive regulation. Essentially, to maintain or increase tax collections, the government would have little choice but to minimize or eliminate excessive regulation.

The ancillary benefits of a regulatory tax credit are manifold and manifest. A regulatory tax credit would impose a teachable moment on tax-hungry elected officials, who would be forced to realize there is a real cost to enacting feel-good regulations. Property owners like Mike Goodman, who face local governments seeking to increase property restrictions, would have the ability to force an immediate financial cost-benefit analysis into any elected official's political equation. This would naturally cause more elected officials to align the government's regulatory and fiscal policies with the conditions of economic liberty needed for job creation and economic growth. States that are rich in natural resources, such as coal, uranium, timber, and, hence, which are disproportionately subject to excessive environmental and land-use regulation, would be able to counteract the economic costs associated with such regulation. This would help return the economic conditions faced by related industries to something closer to that of a genuinely free market. A regulatory tax credit would be a job-creating machine.

Design Regulatory Tax Credits to Serve Limited Government Principles

Of course, the proposal of a tax credit should not be taken lightly. Too often tax credits are used by government to manipulate the economy through central planning and to dish out undeserved subsidies to favored industries that are typically not viable. But not all tax credits violate limited government principles. Whenever tax credits offload government responsibilities to private markets, they are consistent with a limited government philosophy because they serve to shrink government, expand freedom of choice, and encourage more efficiency. That is why tax credits that enable families to send their children to private schools are consistent with a limited government philosophy. Likewise, regulatory tax credits, if designed properly, would reduce tax collections only in direct proportion to the government assuming excessive regulatory power. This would powerfully incentivize the government to stay small and unobtrusive, leaving more space for freedom of choice.

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From a limited government perspective, regulatory tax credits are perhaps best justified as a form of just compensation for the deprivation of property rights and closely connected common law liberties, which is perfectly aligned with American constitutional tradition, if not modern precedent.[10] As such, there is no reason to prefer just compensation in the form of a check written by the government to a citizen (after years of expensive Proposition 207 litigation) over a tax credit that allows a citizen to keep what he has earned. Either way, the government loses revenue. But in the case of a tax credit, at least citizens have the relative advantage in vindicating their rights in so far as they can secure immediate relief for excessive regulation.

Of course, regulatory tax credits could be abused or poorly designed. Just as scandals have arisen in the context of school-choice tax credits, scandals are no doubt possible in a regime of regulatory tax credits. Elected officials should also be wary of the possibility that special interests might clamor for new regulations in order to use a system of regulatory tax credits to obtain unjustifiable tax advantages. For this reason, any system of regulatory tax credits should be as broad-based and generally applicable as possible, while still recognizing that some industries are targeted for excessive regulation and are entitled to relief.

Additionally, a system of regulatory tax credits must be carefully tailored to target the *actual* costs of *excessive*, not *reasonable*, regulation. Toward this end, the system must take care to ensure that the costs claimed as the basis of a tax credit actually relate to the regulation in question, and can be reasonably documented. Thus, there must be clear standards for what constitutes a qualifying *excessive* regulation or *actual* regulatory cost, as well as what documentation is necessary to claim the credit.

Fortunately, the principles for identifying excessive regulation already exist and are widely accepted. Many states have enacted sunrise and sunset laws that lay out a number of legal tests for assessing whether a regulation is truly necessary.[11] Such laws typically require regulations to address a real threat to public health, safety, or welfare, which is not remote, and to be more effective than less restrictive regulatory, common law, or market-based alternatives. These principles could be adapted to establish general "catch all" tax code provisions, guiding taxpayers as to whether a regulation is "excessive" such that they can claim a tax credit. For example, the taxpayer could be permitted to claim as a tax credit all costs directly attributable to regulations that do not address a real threat to public health, safety, or welfare, and that are not more effective than less restrictive regulatory, common law, or market-based alternatives. For clearer guidance for less sophisticated taxpayers, specific categories of excessive regulation could be specifically identified as tax credit "safe harbors." This would help a taxpayer know when he is presumptively safe in claiming the related credit. Categories could include licensing and permitting fees and associated reasonable compliance costs for ordinarily peaceful and productive activities, as well as the documented loss of fair market value attributable to property regulations that burden or deprive existing property rights.

A system of regulatory tax credits must be carefully tailored to target the actual costs of excessive, not reasonable, regulation.

Specific Recommendations for Regulatory Tax Credits

Regulatory tax credits need three basic elements in statute. First, that which constitutes excessive regulation must be defined. Second, creditable costs and expenses of excessive regulation must be defined keeping in mind that a government can always limit its exposure to any regulatory tax credit by simply refusing to excessively regulate and by repealing excessive regulations. Third, overly regulated businesses and individuals must know against which taxes they can claim their regulatory tax credits. At the same time, it is important to underscore that ideally this type of credit should not depend on the imposition of particular kinds of taxes but should be construed as broadly as possible to prevent any level of government from imposing costs from needless regulation with impunity and also to prevent the tax credit from creating constituencies for particular tax regimes. Drafters should look to devise a system of regulatory tax credits that has universal applicability to any tax imposed on any excessively regulated taxpayer.

Each of these issues has already been considered in general. This discussion is simply to suggest how these issues might be addressed more specifically in statute. Other issues such as the mechanics and logistics involved in processing credit claims and potential caps on credits will only be touched on here. The model legislation included in the appendix illustrates one way in which such details could be addressed during the lawmaking process. The three basic elements mentioned here are critical to get right.

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Defining excessive regulation at first seems challenging. One simple method of devising a definition would involve identifying a list of creditable regulations by category or title. But such a list could conceivably be circumvented with an entirely new excessive regulation not on the list. A more elegant and comprehensive solution would combine specific examples of creditable regulations with an open-ended "catch all" definition broad enough to reach all similar regulations that may be enacted, but specific enough to have an objective meaning upon which reasonable people could agree. Any such definition of excessive regulation should be easily understood by a reasonably well-educated person.

A "catch all" definition of excessive regulation is perhaps best drafted in contrast to a definition of reasonable regulation upon which a consensus likely exists. For example, a consensus likely exists that a reasonable regulation must be concerned with protecting public health and safety; in contrast, a definition for an "excessive" regulation would be one *that does not protect individuals from verifiable and substantial damage to their health and safety, or that seeks to protect an individual's health and safety when that individual is ordinarily competent and responsible to do so himself.* In addition to this relatively uncontroversial definition, policymakers should also consider explicitly identifying the following subcategories of a creditable "excessive" regulation for the sake of clarity: 1) any regulation that restricts or prohibits ordinarily harmless property conditions; 2) any regulation that primarily serves esthetic or cultural purposes; 3) any regulation that restricts or prohibits ordinarily harmless action by individuals or organizations; 4) any regulation that restricts or prohibits the ordinarily harmless exercise or enjoyment of an individual or organization's legal rights; and 5) any regulation that mandates individuals or organizations take action that is unlikely to promote public health or safety, and likely to cause substantially more economic costs than benefits.

A reasonable creditable expense is relatively easy to define. *Any direct expense, including out-of-pocket expenses, permitting fees and the value of time, that is incurred* *expressly in order to comply with a creditable regulation* is a creditable expense. A cap on the *value* of time could be set in statute. It is probably not wise, given the intent behind regulatory tax credits, to limit the *amount* of time that could be applied against creditable regulations in general. Instead, it should be required that when regulations are proposed, compliance time be quantified and adjusted according to comments prior to finalizing a regulation. These estimated compliance times for individual regulations would determine the maximum amount of time expense that is creditable due to a given regulation. This exercise combined with the dollar value of time would force regulators to be more circumspect in demands on the private sector. In cases where regulators significantly underestimate the amount of time it takes to comply, taxpayers should have the opportunity to advance their own reasonable estimates, subject to challenge in tax court.

A reasonable, creditable cost would likewise be easy to define for regulations impacting property. *The loss of fair market value of property incurred as a direct result of a creditable regulation* is a creditable cost. The challenge here would be in drafting a statute or promulgating rules to define the quality and quantum of evidence that taxpayers would need to maintain to claim the credit. Property appraisals would be one reasonable way to prove the amount of a related tax credit.

Businesses and individuals claiming a regulatory tax credit should be required to claim the credit against the level of government imposing the regulation as a first recourse. This helps to assure that accountability for regulatory overreach is placed where it properly belongs.

Businesses and individuals claiming a regulatory tax credit should be required to claim the credit against the level of government imposing the regulation as a first recourse. This helps to assure that accountability for regulatory overreach is placed where it properly belongs. It is possible, however, that a taxpayer claiming a credit against a city, for example, might not pay enough taxes to the city to account for all the costs imposed by excessive city regulation. In such cases, taxpayers should be able to claim a credit against other state and local taxes with these third-party jurisdictions billing the city for the value of the credits. For example, if a city imposes $100,000 in costs of excessive regulation on a business that pays only $50,000 in taxes to the city, the business would claim a $50,000 credit against the city and then claim credits that sum up to $50,000 against the school district, the state, the county, or any other taxing jurisdiction within the state. Each level of government besides the city would be made whole by billing the city for the credit claimed. The taxpayer would be responsible for informing each level of government the specifics of the responsible regulatory body against which the credit is being claimed, using a standard form.

The model legislation included in the appendix suggests a framework for establishing an automated clearinghouse of tax credit claims between taxing and regulating jurisdictions, which would be overseen by the State Treasurer, who is elected in the State of Arizona. To ensure that there is political accountability for the enforcement of the regulatory tax credit system, it is recommended that an elected state official be directly responsible for the clearinghouse mechanism, rather than an unelected head of a state revenue agency.

Income and property taxes, which are most often paid by the taxpayer who is also the victim of excessive regulation, lend themselves to credits of this type especially well. The same is true of transaction privilege taxes, which are paid by businesses but then passed on to the consumer. Sales taxes are more problematic by their nature. Theoretically, they are paid by the consumer rather than the (more heavily regulated) business, so the business has no right to withhold any portion of sales taxes as a credit. To be effective in deterring excessive regulation of businesses when a tax credit is to be applied against sales taxes, the law would need to allow regulated businesses to transfer their entitlement to a tax credit to their customers and apply that tax credit against the sales tax liability of their customers. This would both benefit the customer and help the business offset the regulatory cost by lowering the total cost of their goods and services. Similarly, as shown in the included model legislation, the law should allow excessively regulated lessees, who do not pay property taxes, to transfer the right to claim any related tax credit to their lessors under mutually agreed upon terms, such as the reduction of rent.

Regulatory tax credit policy should not be one-size-fits-all. Policymakers should approach the regulatory tax credit concept deliberatively, prudently, and flexibly.

Of course, regulatory tax credit policy should not be one-size-fits-all. Policymakers should approach the regulatory tax credit concept deliberatively, prudently, and flexibly. It is possible, for example, that certain governments overregulate so much that enacting a system of uncapped regulatory tax credits would deprive them of sufficient revenues to perform legitimate functions. It may be prudent to cap regulatory tax credits at an amount substantial enough to encourage regulatory reform and to deter excessive future regulation but not so great as to shut down government.

The model legislation included in the appendix illustrates how regulatory reform could be encouraged by combining a first year cap on the allowable amount of a credit with the ability to carry-forward the unused portion of that credit to future tax years unless the excessive regulation is first repealed. In essence, this would allow taxpayers to shoot a warning shot across the bow of regulatory jurisdictions and give them a reasonable period of time to repeal excessive regulations.

Additionally, subject to political and constitutional special laws considerations, it may be desirable to enact laws that target distinct regulatory tax credits to the revenue sources of specific categories of agencies or governments known to be especially problematic in their regulatory policies. For example, a system of regulatory tax credits might be applied against the property or sales taxes of municipalities, which have a documented custom and practice of overregulation in Arizona and elsewhere.[12] Further, legislation should include a stopgap to discourage governments from raising taxes or fees to offset tax credits. The model legislation in the Appendix includes a provision that would automatically void a regulation if a government needed to raise taxes or fees to offset tax credits claimed under the regulation.

Conclusion

Careful drafting and strategic implementation will ultimately determine whether a regulatory tax credit actually serves its purpose of aligning fiscal policy with a limited government philosophy. But there is no reason in principle why these challenges cannot be overcome. Moreover, the inability of existing reform measures, such as Proposition 207, to produce a systemic, freedom-friendly change in the behavior of government underscores that a new policy is needed to generate real regulatory reform. For this reason, advocates of free-market regulatory policy should embrace what might prove to be the most powerful tool yet for encouraging government to avoid and repeal excessive regulation—the regulatory tax credit.

Model Legislation for Universal Regulatory Tax Credits

A. A credit is allowed against the taxes imposed, levied, assessed or authorized by Titles ______ for the creditable costs and creditable expenses of excessive regulation incurred by a taxpayer after ______________.

B. The credit allowed under this section is the total amount of creditable costs and creditable expenses incurred by a taxpayer in the corresponding taxable year.

C. Subject to the following limitations, the taxpayer may claim a credit under Titles ______ in the corresponding taxable year and the taxpayer may carry forward for up to ten consecutive taxable years the unclaimed amount of the credit. The following limitations apply to the amount of a credit that may be claimed:

   1. The taxpayer may claim a credit in an amount that is up to 10 percent of that taxpayer's aggregate tax liability under any of Titles _____ in the taxable year in which the creditable costs and expenses are incurred.
   2. If any portion of the credit is carried forward into a consecutive taxable year, then the taxpayer may claim a credit in an amount that is up to 100 percent of that taxpayer's aggregate tax liability under any of Titles ______ in that taxable year ratably to the extent that any excessive regulation giving rise to any portion of the carried-over credit had not been previously repealed or rescinded.

D. For each applicable taxable year, the taxpayer shall claim the credit on a singular form prescribed by the Office of the Treasurer, tendered to the relevant taxing authority under Titles _______ when the related tax liability is due, in which the taxpayer shall identify:

   1. Each excessive regulation giving rise to any portion of the credit and the corresponding amount of creditable costs and creditable expenses attributable to each such excessive regulation;
   2. The state agency and/or political subdivision directly responsible for enacting, promulgating and/or enforcing each such excessive regulation;
   3. The nature, source, and amount of any tax liability to which the claimed credit is applied;
   4. The taxpayer's aggregate tax liability under Titles __________;
   5. The total amount of any portion of the credit that will be applied in the current taxable year; and
   6. The total amount of any portion of the credit that will be

carried over into consecutive taxable years.

7. In the case of any failure to comply with this subsection, the taxing authority shall disallow the credit until the taxpayer is in full compliance.

E. All or part of any unclaimed amount of any credit allowed under this section may be assigned under the following conditions:

   1. A single assignment may involve one or more assignees; but an assignee may not again assign the credit.
   2. Both the assignor and assignee must submit together a single written notice of the assignment to the Office of the Treasurer within thirty (30) days after the assignment. The notice shall include a processing fee equal to two hundred dollars. The notice shall include: a) the name of the assignor and assignee; b) the date of the assignment; c) the amount of the assignment; d) the assignor's tax credit balance before the assignment and the remaining balance after the assignment; and e) all tax identification numbers for both assignor and assignee.
   3. An assigned credit shall be applied by the assignee and allowed by the taxing authority as if the assignee were entitled to an original credit in the amount of the assigned credit.
   4. In submitting any claim for a credit, the assignee must furnish the relevant taxing authority with a genuine copy of the foregoing notice.
   5. In the case of any failure to comply with this subsection, the taxing authority shall disallow the tax credit until the assignor and assignee are in full compliance.

F. The Office of the Treasurer shall adopt rules and publish and prescribe forms and procedures as necessary to allow taxing authorities under Titles _______ to recoup revenues attributable to any claimed credit under this section from any distinct state agency or political subdivision that is directly or jointly responsible for enacting, promulgating and/or enforcing each excessive regulation giving rise to any portion of the credit in a corresponding amount. The rules promulgated hereunder shall provide:

   1. The Office of the Treasurer shall have authority to establish a secure electronic clearinghouse whereby demands for recoupment may be claimed and paid through electronic debits and credits to the accounts of the respective taxing authority, state agency, or political subdivision.
   2. The taxing authority shall promptly make demand for recoupment upon each responsible state agency or political

subdivision in a form that communicates all relevant information supplied by the taxpayer.

3. Each responsible state agency or political subdivision receiving said demand shall be liable for the same and promptly pay the amount demanded ratably.
4. If the state agency or political subdivision receiving said demand does not have sufficient funds to pay the amount demanded, and will not have sufficient funds to pay the amount demanded without engaging in new borrowing or imposing new or increased taxes or fees, then each underlying excessive regulation identified by the taxpayer, and all related enforcement proceedings or penalties, shall be immediately deemed void ab initio and without lawful effect, and not replaced with any substantially equivalent regulation, for each tax year in which the tax credit has been or could have been claimed, whereupon the demand shall be deemed paid in full.

G. The Office of the Treasurer shall maintain annual data on the total amount of monies credited pursuant to this section, and shall provide those data, both aggregated and disaggregated, categorized according to excessive regulation, taxing authority and responsible state agency and/or political subdivision, without the personal identifying information of any taxpayer, to the public electronically on demand.

H. Neither a taxing authority nor a state agency or political subdivision that is responsible for excessive regulation may engage in new borrowing or impose new or increased taxes or fees to offset the fiscal impact of any credit allowed under this section. Accordingly, if the fiscal impact of any credit allowed by this section threatens public health and safety by requiring the discontinuation of essential governmental services, then the underlying excessive regulation identified by the taxpayer, and all related enforcement proceedings or penalties, shall be immediately deemed void ab initio and without lawful effect, and not replaced with any substantially equivalent regulation, for each tax year in which the tax credit has been or could have been claimed, whereupon the tax credit shall be disallowed upon corresponding notice given to the taxpayer.

I. In this section, unless the context otherwise requires:

1. "Regulation" means any legislation, administrative rule, or executive action by the state, its agencies or political subdivisions, which is governmental in nature and not proprietary, that has the force of law and a) requires individuals or private organizations to act in one or more ways, b) restricts or prohibits individuals or private

organizations from acting in one or more ways, or c) restricts or prohibits one or more property conditions.

2. "Excessive regulation" means: a) any regulation that does not protect individuals from verifiable and substantial damage to their health and safety; b) any regulation that primarily serves esthetic or cultural purposes; c) any regulation that restricts or prohibits ordinarily harmless property conditions; d) any regulation that restricts or prohibits ordinarily harmless action by individuals or organizations; e) any regulation that restricts or prohibits the ordinarily harmless exercise or enjoyment of an individual or organization's legal right(s); and f) any regulation that mandates individuals or organizations take action that is i) unlikely to promote public health or safety, and ii) likely to cause substantially more economic costs than benefits.
3. "Creditable cost" means the loss of the fair market value of property incurred as a direct result of an excessive regulation.
4. "Creditable expense" means any actual expense that is incurred as a direct result of an excessive regulation; including, but not limited to, the fair market value of time spent fulfilling regulatory requirements.
5. "Taxpayer" means the individual or entity upon which any tax authorized by Titles __________________ is imposed or assessed.

J. The Office of the Treasurer shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate this section and its purposes of furnishing taxpayers with compensation for excessive regulation and encouraging responsible state agencies and political subdivisions to repeal or rescind excessive regulation. If a provision of this section or its application to any person or circumstance is held invalid for any reason, the invalidity does not affect other provisions or applications of this section that can be reasonably be given effect without the invalid provision or application, and to this end the provisions of this section are severable. In any court challenge to the validity of this section, taxpayers shall have standing to intervene.

ENDNOTES

1. See generally Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

2. Jim Walsh, "Historic status for Lehi still in exploratory stage," *Arizona Central* (Nov. 15, 2010), http://www.azcentral.com/community/mesa/articles/2010/11/15/20101115mesa-lehi-historic-status1113.html; Mari Herreras, "'Single-family' stretch: Jefferson Park residents fight to keep Michael Goodman's mini-dorms away," *Tucson Weekly* (January 27, 2011), http://www.tucsonweekly.com/tucson/single-family-stretch/Content?oid=2504001; City of Flagstaff, *Introducing the New Zoning Code* (August 30, 2010), http://www.flagstaff.az.gov/DocumentView.aspx?DID=12319.

3. See, e.g., City of Scottsdale, *Historic Preservation District Overlay Waiver of Claims for Diminution in Value of Property*, http://www.scottsdaleaz.gov/Assets/Public+Website/bldgresources/Prop_207_HP_Waiver.pdf; Pima County Development Services, *Staff Report* (August 31, 2011), http://www.pimaxpress.com/documents/planning/PZ_agenda/2011/supplement/Co9-10-03_final.pdf.

4. Nicole V. Crain & W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (SBA September 2010), http://archive.sba.gov/advo/research/rs371tot.pdf.

5. Sanjay B. Varshney and Dennis H. Tootelian, *Cost of State Regulations on California Small Businesses Study* (SBACA September 2009), http://www.sba.ca.gov/Cost%20of%20Regulation%20Study%20-%20Final.pdf.

6. Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (Upjohn Institute 2006); Joshua Hall and Russell Sobel, *Public Policy and Entrepreneurship*, at 10 (July 2006), http://www.be.wvu.edu/divecon/econ/sobel/entr/papers/hall&sobel.pdf.

7. Allison Hurtado, "A little bit of county right in the middle of Ahwatukee," *Ahwatukee Foothills News*, August 28, 2011, 1, 7.

8. See, e.g., Ronald Coase, *Economists and Public Policy*, *in Large Corporations in a Changing Society* (J. Fred Weston ed., New York University Press 1974), 184; Bernard H. Seigan, *Drafting a Constitution for a Nation or Republic Emerging into Freedom* (2d ed., George Mason University Press 1994), 46–47, (summarizes that in "53 studies of government regulation, by more than 60 individual and institutional researchers, which have appeared in the most prestigious scholarly literature ... the vast bulk of these scholars favor either total or substantial deregulation of the area under study."; Morris M. Kleiner, *Occupational Licensing and the Internet: Issues for Policy Makers* (Univ. of Minn. & Nat'l. Bureau of Econ. Research 2002), 4–5, (compiles studies of occupational regulation); Robert Hardaway, "Taxi and Limousines: The Last Bastion of Economic Regulation," *Hamline Journal of Public Law & Policy* 21, no. 319 (2000): 382; Stanley J. Gross, "Professional Licensure and Quality: The Evidence," Cato Policy Analysis no. 79 (1986), http://www.cato.org/pubs/pas/pa079.html; see generally Federal Trade Commission & U.S. Department of Justice, *Improving Health Care: A Dose of Competition* (July 2004), 22-27.

9. See, e.g., Nick Dranias, "2011 Legislative Report Card for Arizona's Fiftieth Legislature, First Regular Session," Goldwater Institute Policy Report No. 243 (August 24, 2011), http://www.goldwaterinstitute.org/article/6291; Dranias, "2010 Legislative Report Card for Arizona's Forty-Ninth Legislature, Second Regular Session," Goldwater Institute Policy Report No. 240 (August 19, 2010), http://www.goldwaterinstitute.org/article/4953.

10. See *Richard A. Epstein, Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard

University Press 1985).

11. "Sunset review" laws, which apply to a wide range of regulations restraining peaceful conduct and activities, were enacted in over half of the states, including Arizona, during the 1970s and 1980s. James E. Gerson, *Temporary Legislation*, 74 U. CHI. L. REV. 247, 259–60 (2007). At least 19 states, including Arizona, have also enacted "sunrise review" laws, which typically apply to occupational regulations. ARIZ. REV. STAT. ANN. §§ 32-3101 to -3108 (2009); COLO. REV. STAT. § 24-34-104.1(2009); FLA. STAT. § 11.62 (2009); GA. CODE ANN. §§ 43-1A-1 to -1A-9; (2009); HAW. REV. STAT. § 26H-2 (2009); KAN. STAT. ANN. §§ 65-5001 to -501 (2009); ME. REV. STAT. ANN. tit. 32, §§ 60-J to -L, tit. 5, §12015 (2009); MINN. STAT. §§ 214.001 to -.002 (2009); NEB. REV. STAT. §§ 71-6201 to -6229 (2009); N.M. STAT. §§ 12-9A-1 to -9A-6 (2009); N.C. GEN. STAT. §§ 120-149.1 to -149.6 (2009); S.C. CODE ANN. §§ 40-1-10 to -1-220 (2009); TENN. CODE. ANN. §§ 4-29-101 to -29-122 (2009); TEX. CODE. ANN. §§ 318.001 to -.003 (2009); UTAH CODE ANN. §§ 36-23-101 to -108 (2009); VT. STAT. ANN. §§ 3102-3107; VA. CODE ANN. §§ 54.1-100, 54.1-309 to -311; WASH. REV. CODE §§ 18.118.005 to -.900, 18.120, 18.120.010 to -.910 (2009); W. VA. CODE §§ 30-1A-1 to -1A-6 (2009).

12. See Nick Dranias, "The Local Liberty Charter: Restoring Grassroots Liberty To Restrain Cities Gone Wild," *Phoenix Law Review* 3, no. 1 (Spring 2010): 115. Because of constitutional provisions requiring uniform property tax treatment of similar classes of property, drafters should anticipate the colorable argument that regulatory tax credits, which are applicable to property taxes, require a constitutional amendment. However, this argument should fail because tax credits are not equivalent to tax exemptions for specific classes of property, nor do they necessarily result in differential property tax treatment of property in the same class. Moreover, any such objection fails to address the fact that the property taxing authority should be able to seek reimbursement of lost revenue from the responsible regulating authority through a clearinghouse mechanism, such as illustrated in the model legislation included in the appendix.

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