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MEMORANDUM

TO: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: November 16, 2015

SUBJECT: Proposed initiative measure #49, concerning the voter tax credit

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2015-2016 #44, submitted on October 9, 2015, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To impose a tax of one-half percent on Colorado taxable income in excess of \$405,000, to be adjusted for inflation, of every individual, estate, and trust;
2. To use the revenue generated by said taxes to create a tax credit available to any individual who participates in a general election by submitting a ballot; and
3. To increase electoral participation and decrease the outsize influence of large contributions and election expenditures made by wealthy contributors and special interest groups.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
3. How does the headnote for the section relate to the voter tax credit proposed?
4. How does providing a tax credit to a voter for submitting a valid ballot "decrease the outsize influence of said contributions and expenditures"?
5. With respect to proposed section 39-22-130 (2) (A):
 - a. How did the proponents arrive at the figure of \$405,000 as the amount of income the excess of which triggers payment of the new tax?
 - b. This section of the proposed initiative includes an adjustment for inflation. Sometimes a particular Consumer Price Index series is referenced in statute which directs the use of, for example, the Denver-Boulder-Greeley CPI. For purposes of the proposed initiative, does it matter which particular inflation adjuster is used?
6. With respect to proposed section 39-22-130 (4), which states that the revenue from the new tax is to be appropriated annually by the General Assembly to

fund a refundable tax credit available for any elector that submits a ballot in a general election:

- a. Colorado law, section 1-1-104 (17), C.R.S., defines general election to mean an election occurring in even-numbered years. Is it your intent that the availability of the tax credit be limited to income tax years in which a general election takes place or that it also be available in odd-numbered income tax years?
- b. How would a taxpayer claim the credit in an odd-numbered year in which there is no general election?
- c. What happens to the moneys collected in odd-numbered income tax years?
- d. What does it mean for an elector to "submit[] a valid ballot"? Is this the same thing as casting a valid ballot?
- e. How would a taxpayer demonstrate that he or she has submitted a valid ballot in order to be eligible to obtain the tax credit?
- f. A tax credit is generally considered "refundable" if the state issues a payment to the taxpayer to cover an amount of a credit that exceeds the taxpayer's tax liability for a particular income tax year. In what way is this tax credit refundable? Do you anticipate that the amount of the credit made available will be so large relative to the size of the income tax liability incurred by an average taxpayer that refunds will be given most taxpayers or are you using the word "refundable" to mean essentially a direct payment made by the state through the Department of Revenue for each taxpayer who submits a valid ballot?

7. With respect to proposed section 39-22-130 (5):

- a. How is the number of eligible claimants determined?
- b. Would the Department of Revenue have to wait until all even-year individual tax returns are filed before it is able to determine the number of claimants who are able to claim the refundable credit?
- c. Under the proposed initiative, is the Department of Revenue required to calculate the amount of the credit that may be allowed each eligible taxpayer based on the total number of electors who cast a ballot in the general election? If so, what happens to any remaining moneys if every voter that submits a ballot doesn't claim a tax credit?

- d. Are there any restrictions on the administrative costs described in this subsection (5)?
8. Do the requirements specified in subsection (6) of the proposed initiative apply to provisional ballots or contested ballots?
9. The amount of credit moneys made available is dependent upon the tax revenue collected under subsection (2), which would become a known quantity when annual tax returns are filed with the Department of Revenue. However, it appears these events occur at the same time as the claiming of tax credits under subsection (5) of the proposed initiative. How would the Department of Revenue and taxpayers determine the credit amount if they do not know how much revenue was collected from the tax imposed in subsection (2) until all the tax returns for a given year have been filed? Does the appropriation in proposed subsection (4) determine the amount of tax credits available under subsection (5) for the next tax year?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The headnote for the section should include the word "declaration" to indicate to the reader that there is a declaration in subsection (1).