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Colorado General Assembly

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MEMORANDUM

TO: Brian Watson and John Brackney
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 8, 2020
SUBJECT: Proposed initiative measure 2019-2020 #172, concerning Tax Deduction for Limited Vehicle Usage

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.

An earlier version of this proposed initiative, proposed initiative 2019-2020 #128, was the subject of a memorandum dated October 8, 2019. Proposed initiative 2019-2020 #128 was discussed at a public meeting on October 10, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To create a tax deduction from Colorado gross income for driving a primary motor vehicle less than 12,000 miles per calendar year.

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. Proposed section 39-22-543 (2)(a) allows a deduction of \$10,000 for an individual who drives his or her primary motor vehicle more than 9,000 miles, and subsection (2)(b) provides a lesser deduction for an individual who drives less than 9,000 miles. Neither provision covers a situation in which an individual drives exactly 9,000 miles. Do you intend for one of the subsections to say "9,000 miles or more" or "9,000 miles or less", depending on which amount that individual should be eligible to deduct?
3. The proposed initiative allows a resident individual to take the deduction from their "Colorado gross income". This term is not defined in statute, and is used only in two places in reference to corporate or employer taxes. With regard to individual income taxes, the term is used in 1 C.C.R. 201-2, Regulation 39-22-110 (1), along with the phrase "Colorado modified federal adjusted gross income", in the context of apportioning taxes for part-year residents and nonresidents. What is the intent of taking the deduction from "Colorado gross income" rather than treating it like other Colorado subtractions from federal taxable income? Is the goal that the deduction should not be apportioned for part-year residents in the same way as the subtractions allowed in section 39-22-104 (4), C.R.S.? Or is there another way in which the deduction is intended to be treated differently than other subtractions from income?
4. The proposed initiative defines a "primary motor vehicle" as the vehicle the individual operates for the most miles in the tax year. How would an individual who drives multiple vehicles shared with others document the mileage they drove for each vehicle?

5. For a part-year resident, do the miles driven while they, the individual, were not a resident count toward the credit? For example, if an individual was a resident for nine months of the year, would only the miles driven during those nine months count, or would all miles driven on the vehicle during the tax year count?
6. If more than one person claims the deduction for the same vehicle, how would that be resolved? Are there any criteria the department of revenue should use to determine which of them is entitled to claim the deduction?
7. Subsection (2)(a) of the newly proposed section 39-22-543 reads as if the deduction is created in perpetuity, but the entire section is repealed effective January 1, 2031, by operation of subsection (5). If the intention is to limit the deduction to a specified number of years, please include that in subsection (2)(a). For example, "For income tax years commencing on or after January 1, 2021, but before January 1, 2031. . .". The repeal date in subsection (5) should only occur after the statute of limitations for the filing of late and amended returns has passed.
8. In rare circumstances, an individual's tax year may not be a calendar year. In that circumstance, should the deduction be based on the mileage driven during that particular individual's tax year, or the calendar year?
9. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

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. It is standard drafting practice to write numbers out, rather than use digits. For example, "9,000 miles" should be "nine thousand miles" and "\$5,000.00" should be "five thousand dollars".
2. The text of the proposed initiative is correctly in small capital letters, but please also use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first work of each new paragraph;
 - c. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - d. The first letter of only proper nouns. For example, "the State," "Section," "Primary Motor Vehicle," "Executive Director," and "Department of Revenue" should not be capitalized.
3. When designating the power to promulgate rules, and when adding a legislative declaration, it is standard drafting practice to include "**- rules**" and "**- legislative declaration**", respectively, in the headnote of the statutory section.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. The subparagraphs (I) and (II) in subsection (3)(a) should be broken out as follows:
 - X-X-XXXX. Headnote.** (3) (a) Subsection
 - (I) Subparagraph; and
 - (II) Subparagraph
 - (b) Paragraph