

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Chelsea Stallings and Katherine Stigberg

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 4, 2020

SUBJECT: Proposed initiative measure 2019-2020 #288, concerning creating a nicotine and vaping products tax

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 ##287 to 292. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #287 and ##288 to 292, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda 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 increase the cigarette tax by nine and one-half cents per cigarette;
2. To allow the cigarette tax to be adjusted for inflation;
3. To remove the discount on the sale of cigarette stamps;
4. To increase the tobacco products tax by twenty-two percent of the manufacturer's list price;
5. To remove the tobacco products distributor tax reduction;
6. To create a tax on all sales and purchases of all nicotine and vaping products at the rate of thirty-two percent of the purchase price;
7. To create the preschool programs cash fund for expanding the number of children in preschool and to require the general assembly to enact legislation for the administration of the cash fund;
8. To allow the programs funded by the tobacco education programs fund to also apply to nicotine and vaping products;
9. To create a tobacco products inventory tax;
10. To create a presumption that all charges included on an invoice of manufacturer or supplier are for the sale of tobacco products;
11. To define "delivery sale" for purposes of the cigarette tax;
12. To distribute the additional total revenue collected from the increased cigarette and tobacco products tax and the new nicotine and vaping products tax to the preschool programs cash fund, the tobacco tax cash fund, and the tobacco education programs fund;
13. Requiring state audits of the new revenue used for preschool programs; and
14. Authorizing the state to keep and spend all the revenue from the tax rate increases on cigarettes, tobacco products, and vaping and nicotine products as a voter approved revenue change.

Substantive Comments and Questions

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

1. What does the term "purchase price" mean for purposes of proposed section 39-28.6-103?
2. Is the "purchase price" referred to in proposed section 39-28.6-103 (1) the same as the "gross taxable sale" of a nicotine or vaping product referred to in proposed section 39-28.6-103 (2)(b)?
3. Are the taxes imposed by proposed section 39-28.6-103 in addition to sales taxes by other entities than those listed in proposed section 39-28.6-103 such as any special district or authority authorized to levy a sales tax pursuant to title 24, 25, 29, 30, 32, 37, or 43, Colorado Revised Statutes?
4. Is the tax in proposed section 39-28.6-103 intended to be a use tax as well as sales tax?
5. Other than the rate, how is the tax in proposed section 39-28.6-103 different from the tax in section 39-28.5-102, Colorado Revised Statutes?

Technical Comments

There are no new technical comments.