

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Jon Caldara and Jerry Sonnenberg

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 27, 2020

SUBJECT: Proposed initiative measure 2019-2020 #306, concerning State Income Tax Rate Reduction

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.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be, for income tax years commencing on and after January 1, 2020:

1. To reduce both the individual and the corporate state income tax rate from 4.63% to 4.55%;

2. To reduce the alternative minimum tax rate from 3.47% to 3.33% and reduce the percentage of the federal alternative minimum tax credit allowed to Colorado alternative minimum taxpayers from 12% to 11.86%; and
3. To increase the amount by which the state income tax is reduced during years when the income tax rate reduction TABOR refund mechanism is triggered, so that the income tax rate is reduced by 2.80778%.

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. The first section of the proposed initiative does not have an amending clause stating where it will be added to the Colorado Revised Statutes. Therefore, the first section will be printed in the session laws and not in the Colorado Revised Statutes. Is this the proponents' intent?
3. The Office of the State Controller has certified that state revenue collected during the 2018-2019 fiscal year exceeded the excess state revenues cap by \$428.3 million. Should that amount replace the \$380.4 million included in subsection (1)(a) of the proposed initiative's legislative declaration?
4. The proposed initiative reduces the state income tax rate from 4.63% to 4.55%, a decrease of about 1.7%, and reduces the state alternative minimum tax rate from 3.47% to 3.33%, a decrease of about 4.0%. Why decrease the alternative minimum tax rate by more than the income tax rate?
5. The proposed initiative reduces the credit that a taxpayer may apply to his or her alternative minimum tax liability from 12.00% to 11.86% of the federal credit, a decrease of about 1.2%. Why decrease this credit percentage by less than the income tax rate?
6. For years when the state uses a temporary income tax rate reduction to issue TABOR refunds, the proposed initiative requires that the income tax rate be reduced by 2.80778%. When this refund mechanism is used, is it correct to interpret the proposed initiative as requiring that the state income tax rate be reduced from 4.55% to 4.42224601%?

7. The proposed initiative takes effect upon proclamation of the governor. When do the proponents' anticipate this proclamation will occur?
8. The proposed initiative changes the income tax rate for the current tax year 2020.
 - a. Wage withholding tables for tax year 2020 have already been prepared by the department of revenue and implemented by employers. Will the proposed initiative require retroactive changes to the withholding schedules? If so, emergency rulemaking may be required.
 - b. Will the proposed initiative's effective date allow enough time for tax forms to be modified and printed to reflect the reduced tax rate?
 - c. Wage earners from whom taxes are withheld and taxpayers making estimated tax payments will have overpaid taxes for the first ten months of tax year 2020, requiring the state to issue additional refunds for overpaid taxes when 2020 tax returns are filed in 2021. Is this the proponents' intent?
 - d. The state uses accrual accounting, which accounts for tax revenue at the time when the economic activity being taxed occurred, rather than the time when the cash transaction occurred. Reducing taxes owed for tax year 2020 reduces state revenue for the 2019-2020 state fiscal year on an accrual accounting basis, which would require a negative accounting adjustment to revenue after that fiscal year is complete. Is this the proponents' intent?
 - e. Reducing state income taxes for the 2020 and 2021 tax years will reduce revenue for the 2020-2021 state fiscal year relative to expectations used to write the 2020 Long Bill. Do the proponents intend that the General Assembly pass supplemental appropriations bills to decrease state expenditures in order to balance the budget?
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 use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
2. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
3. Although the text of the proposed initiative should be in small capital letters, 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 word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
4. The word "State" in section 1 of the proposed initiative does not need to be capitalized.