

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Jon Caldara and Eric Broughton

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 5, 2022

SUBJECT: Proposed initiative measure 2021-2022 #130, 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 purpose of the proposed amendment to the Colorado Revised Statutes appears to be:

1. To reduce both the individual and the corporate state income tax rates from 4.55% to 4.54%.

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. Although the proposed initiative lowers the individual and corporate state income tax rate, it does not lower the state alternative minimum tax rate. Have the proponents considered making corresponding adjustments to the state alternative minimum tax rate and the credit that a taxpayer may apply to his or her alternative minimum tax liability?
3. Section 39-22-627 (1)(a), C.R.S., reduces the state income tax rate to 4.50% under certain circumstances when a TABOR refund is required to be issued. Does this proposed initiative impact that income tax rate reduction?
4. There are a number of statutes in the Colorado Revised Statutes that state that the individual and corporate state income tax rate is 4.63%. Beyond those sections amended in the proposed initiative, these sections include 39-22-627 (1), 39-22-627 (2), 39-22-627 (3), and 39-22-627 (6), C.R.S. Would the proponents consider amending these sections to prevent future confusion?
5. The proposed initiative changes the income tax rate for tax years beginning on or after January 1, 2022.
 - a. To avoid potential ambiguity with respect to which rates apply to which tax years, would the proponents consider amending subsections 39-22-104 (1.7)(b) and 39-22-301 (1)(d)(I)(J), C.R.S., to add "BUT BEFORE JANUARY 1, 2022," after the existing statutory dates of "January 1, 2020," in each of these subsections? (If so, this would require conforming changes to the amending clauses as well.)
 - b. Wage withholding tables for tax year 2022 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.
 - c. Will the proposed initiative's effective date allow enough time for tax forms to be modified and printed to reflect the reduced tax rate?

- d. 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 2022, requiring the state to issue additional refunds for overpaid taxes when 2022 tax refunds are filed in 2023. Is this the proponents' intent?
 - e. 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 2022 reduces state revenue for the 2021-2022 state fiscal year on an accrual accounting basis, which may require a negative accounting adjustment to revenue after that fiscal year is complete. Is this the proponents' intent?
6. Current revenue forecasts anticipate that the state will issue TABOR refunds to taxpayers for the 2022-2023 and 2023-2024 budget years. Reducing the income tax rate would reduce TABOR refunds for these years. Is this the proponents' intent?
7. Section 1-40-106 (3)(e), C.R.S., requires measures that reduce state tax revenue through a tax change to have a ballot title that begins with "Shall there be a reduction to the (description of tax) by (the percentage by which the tax is reduced in the first full fiscal year that the measure reduces revenue) thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to (the three largest areas of program expenditure) by an estimated (projected dollar figure of revenue reduction to the state in the first full fiscal year that the measure reduces revenue) in tax revenue...?".
- a. Does the proposed initiative create an income tax change?
 - b. Is the primary purpose of the proposed initiative to lower tax revenues collected?
8. Proposed initiative 2021-22 #31, which is already qualified for the 2022 general election ballot and which shares one proponent with this proposed initiative, seems to have a substantially similar purpose to this proposed initiative in that it will, if approved, reduce the state individual and corporate income tax rates from 4.55% to 4.40%.
- a. Do the proponents intend that both proposed initiative 2021-22 #31 and this proposed initiative appear on the 2022 ballot?
 - b. If so, what do the proponents believe the legal effect will be if the voters approve both proposed initiatives?

- c. If not, is it the proponents' intent that proposed initiative 2021-22 #31 be withdrawn from the 2022 general election ballot and that this proposed initiative replace it?
- d. If proponents do not intend that proposed initiative 2021-22 #31 be withdrawn from the 2022 general election ballot, what is the intent of the proponents in also proposing this proposed initiative?

Technical Comments

There are no new technical comments.