

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Steven Ward
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 28, 2023
SUBJECT: Proposed initiative measure 2023-2024 #15, concerning a Reduction in State Income Tax Rate

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 2023-2024 ##16 and 17.

Purposes

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

1. To reduce both the individual and the corporate state income tax rate from 4.40% to 4.33%; and
2. To require that any decrease in state revenue from reducing the state tax income rate from 4.40% to 4.33% reduce the funding to the Department of Revenue and Department of Personnel equally.

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. Why does the proposed initiative not reduce the state alternative minimum tax rate by the same percentage by which it reduces the individual and corporate state income tax rate? Similarly, why does the proposed initiative not reduce the credit that a taxpayer may apply to the taxpayer's alternative minimum tax liability?
3. Section 39-22-627 (1)(a) reduces the state income tax rate to 4.50% under certain circumstances when a TABOR refund is required to be issued. However, the current state income tax rate is 4.40%, which is below the 4.50% rate specified in section 39-22-627 (1)(a), C.R.S., and the proposed initiative would further reduce the income tax rate, keeping it below 4.50% indefinitely. Is section 39-22-627 (1)(a) thus obsolete? If so, would the proponents consider removing "EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-22-627," in sections 39-22-104 (1.7)(c) and 39-22-301 (1)(d)(I)(K) in order to prevent confusion? In addition, would the proponents consider adding a provision to the proposed initiative that repeals section 39-22-627, C.R.S.?
4. The proposed initiative changes the income tax rate for tax years beginning on or after January 1, 2024.
 - 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)(c) and 39-22-301 (1)(d)(I)(K), to add "BUT BEFORE JANUARY 1, 2024," after the existing statutory dates of "January 1, 2022" in each of these subsections and then consider adding subsection (1.7)(d) to section

39-22-104 and subsection (1)(d)(I)(L) to section 39-22-301 to specify the proposed initiative's state income tax rate reduction? (If so, this would require conforming changes to the amending clause as well).

- b. By the time the proposed initiative appears on the ballot, wage withholding tables for the 2024 tax year will 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 the 2024 tax year, requiring the state to issue additional refunds for overpaid taxes when 2024 tax refunds are filed in 2025. 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 at the time when the cash transaction occurred. Reducing taxes owed for the 2024 tax year reduces state revenue for the 2023-2024 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?
 - f. Reducing state income tax for the 2024 and 2025 tax years will reduce revenue for the 2024-2025 state fiscal year relative to expectations used to write the 2024 Long Bill. Do the proponents intend that the General Assembly pass supplemental appropriations bills to decrease state expenditures in order to balance the budget?
5. Current revenue forecasts anticipate that the state will issue TABOR refunds to taxpayers for the 2023-2024 and 2024-2025 budget years. Reducing the income tax rate would reduce TABOR refunds for these years. Is this the proponents' intent?
 6. Section 3 of the proposed initiative requires that any decrease in state revenue from reducing the tax rate will reduce funding to the Department of Revenue and Department of Personnel equally.

- a. How will the reduction in funding to the Department of Revenue and Department of Personnel be determined?
 - b. The state's fiscal year runs from July 1st to June 30th of the following year, while a tax year runs from January 1st to December 31st. When will the amount of the reduction in funding to the Department of Revenue and Department of Personnel be determined?
 - c. Relative to the Department of Revenue's and Department of Personnel's funding for a specified fiscal year, on which tax year will the reduction in funding to these two departments be based? For example, for fiscal year 2024-2025, will the reduction to the funding for these two departments be based on the 2024 tax year?
 - d. Data for the revenue generated during the 2024 tax year will likely not be available until 2025. If the reduction in funding to the Department of Revenue and Department of Personnel is based on the first half of the state's fiscal year, do the proponents intend that the General Assembly pass supplemental appropriations bills to reduce the funding to these two departments to meet the required reduction? For example, if the reduction in funding for the 2024-2025 fiscal year is based on the 2024 tax year, do the proponents intend for the General Assembly to pass supplemental appropriations bills to reduce the funding to the Department of Revenue and Department of Personnel to meet the required reduction?
 - e. Section 3 does not specify any section or sections of the Colorado Revised Statutes that are being amended. Is this the proponents' intent? If not, would the proponents consider specifying which sections of the Colorado Revised Statutes are being amended to require that any decrease in state revenue from reducing the tax rate will reduce funding to the Department of Revenue and Department of Personnel equally?
7. Proposed initiatives 2023-24 ##16 and 17, which have the same proponents as this proposed initiative, seem to have a substantially similar purpose in that the proposed initiatives will, if approved, reduce the state individual and corporate income tax rates.
- a. Do the proponents intend that proposed initiatives 2023-24 ##16 and 17 and this proposed initiative appear on the same ballot?

- b. If so, what do the proponents believe the legal effect will be if the voters approve all three proposed initiatives?
- c. If not, is it the proponents' intent that proposed initiatives 2023-24 ##16 and 17 be withdrawn?
- d. If proponents do not intend that proposed initiatives 2023-24 ##16 and 17 be withdrawn, what is the intent of the proponents in also proposing proposed initiative #15?

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 practice to include the entire subsection number of any subsection that is being amended. Section 1 of the proposed initiative has omitted the subsection number (1.7) that precedes (c).
2. When amending a date, it is standard practice to strike the entire date (day, month, and year) and indicate the new date in small capital letters as follows:

~~January 1, 2022,~~ JANUARY 1, 2024,