

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 18, 2026

Subject: Proposed initiative measures 2025-2026 #232 and 2025-2026 #233, Concerning an income tax rate cap

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives **2025-2026 #232** and **#233** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives **2025-2026 #232** and **#233**.

Purposes

Purpose for Proposed Initiative 2025-2026 #232

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to statutorily limit the state's income tax rate for individuals and corporations to 4.4% of federal taxable income.

Purposes for Proposed Initiative 2025-2026 #233

The major purpose of the proposed amendment to the Colorado Constitution appears to be to constitutionally limit the state's income tax rate for individuals and corporations to 4.4% of federal taxable income.

Substantive Comments and Questions

The substance of the proposed initiatives 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 each proposed initiative?
2. Both proposed initiatives provide that the individual and corporate income tax would be limited to 4.4% of federal taxable income. Section 39-22-104 (1.7)(c), C.R.S., specifies that federal taxable income is the basis for computing the state income tax.
 - a. What would be the effect of the proposed initiatives if the general assembly changes statute to use a different basis for computing the state income tax than federal taxable income, such as adjusted gross income?
 - b. Section 39-22-104 (3), C.R.S., sets forth certain items that must be added back into federal taxable income that would otherwise be excluded from federal taxable income.
 - i. Is it the proponents' intent that the current addbacks are considered in the calculation of federal taxable income?
 - ii. What would be the effect of the proposed initiatives if the general assembly expands the number of addbacks to federal taxable

income, such that federal taxable income could increase relative to what it is currently?

- c. Does federal taxable income mean a taxpayer's federal taxable income or the aggregate of all taxpayers' federal taxable income?
 - d. Section 39-22-104 (4), C.R.S., sets forth certain items that are subtracted from federal taxable income.
 - i. Is it the proponents' intent that the current subtractions are considered in the calculation of federal taxable income?
 - ii. What would be the effect of the proposed initiatives if the general assembly reduces the number of subtractions to federal taxable income, such that federal taxable income could increase relative to what it is currently?
 - e. Except for state-level modifications such as addbacks and subtractions, federal taxable income is calculated according to the federal Internal Revenue Code.
 - i. What would be the effect of the proposed initiatives if the federal Internal Revenue Code changes the definition of taxable income such that it increases relative to what it is currently?
 - ii. What would be the effect of the proposed initiatives if the federal Internal Revenue Code changes to decrease federal taxable income relative to current amounts?
3. Proposed initiative #233 would amend the state constitution, and proposed initiative #232 would amend state statute, to limit the income tax rate to no greater than 4.4% of federal taxable income. State statute sets the current income tax rate for individuals and corporations at 4.4%. The state constitution requires a vote of the people to increase the statutory income tax rate. Thus, the income tax rate cannot increase without a vote of the people and the people can vote to have an income tax rate above 4.4%. How do the proposed initiatives change current law?
4. What is the intended effect of the proposed initiatives if another proposed initiative on the same ballot raises the income tax rate above 4.4%? What if the affirmative vote for the initiatives is equal? If a graduated income tax initiative is

passed on the same ballot as a proposed initiative, and the graduated income tax provides for some income tax rates below 4.4% and some above 4.4%, would the two initiatives conflict? To what extent would they conflict? How would a conflict be resolved?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiatives as follows:

1. These technical comments apply only to proposed initiative #232:
 - a. Typically, a section of statute only includes a subsection “(1)” if there is at least one additional subsection in the section. Because there are no other subsections in this section, the “(1)” in proposed section 1 should be removed.
 - b. Typically, parts of an article in the C.R.S. are organized so that the definitions section appears before other sections that contain the substantive provisions of the part. Accordingly, the proposed new section 39-22-102.5 should be renumbered as “39-22-103.5” so that it follows the definitions section 39-22-103.
2. This technical comment applies to both proposed initiatives: It is standard drafting practice to use small capital letters to show the language being added to the C.R.S. The headnote should remain in lowercase letters. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.