

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Jon Caldara and Jerry Sonnenberg
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2021
SUBJECT: Proposed initiative measure 2021-2022 #30, 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:

1. To reduce both the individual and the corporate state income tax rate from 4.55% to 4.50%.

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 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 his or her 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. How 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 39-22-604 (18)(a), 39-22-604 (18)(b), 39-22-627 (1), 39-22-627 (2), 39-22-627 (3), and 39-22-627 (6). 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), 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. The word "COMMENDING" should be changed to "COMMENCING" in section 39-22-104 (1.7)(c).
 - c. By the time the proposed initiative appears on the ballot, wage withholding tables for tax year 2022 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.

- d. Will the proposed initiative's effective date allow enough time for tax forms to be modified and printed to reflect the reduced tax rate?
- e. 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?
- f. The state uses accrual accounting, which accounts for tax revenue at the time when the economic activity being tax 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?
- g. Reducing state income tax for the 2022 and 2023 tax years will reduce revenue for the 2022-2023 state fiscal year relative to expectations used to write the 2022 Long Bill. Do the proponents intend that the General Assembly pass supplemental appropriations bills to decrease state expenditures in order to balance the budget?

Technical Comments

There are no technical comments.