

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Jon Caldara and Ben Murrey¹
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 28, 2023
SUBJECT: Proposed initiative measure 2023-2024 #13 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.

¹ This initiative was filed by designated representatives of the proponents, Jon Caldara and Ben Murrey, on February 14, 2023. Due to a clerical error, an earlier version of this memorandum incorrectly listed the names of the proponents.

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 4.40% to 4.35%.

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 rates, 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 may be applied to a taxpayer's 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. 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)(b) and 39-22-301 (1)(d)(I)(L) 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, 2025.
 - a. To avoid potential ambiguity with respect to which rates apply to which tax years, would the proponents consider amending sections 39-22-104 (1.7)(c) and 39-22-301 (1)(d)(I)(K), C.R.S., to add "BUT BEFORE JANUARY 1, 2025," after the existing statutory dates of "January 1, 2022," in each of these subsections? (If so, this would require conforming changes to the amending clauses as well.)

- 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. 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 2025 reduces state revenue for the 2024-2025 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?
- 5. Current revenue forecasts anticipate that the state will issue a TABOR refund to taxpayers for the 2024-25 budget year. Reducing the income tax rate would reduce the TABOR refunds for this year. Is this the proponents' intent?
- 6. 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?
- 7. Proposed initiative 2023-24 #14, which has the same proponents as this proposed initiative, seems to have a substantially similar purpose in that it will, if approved, reduce the state individual and corporate income tax rates.
 - a. Do the proponents intend for both proposed initiative 2023-24 #14 and this proposed initiative to appear on the 2024 general election 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 2023-24 #13 be withdrawn from the 2024 general election ballot and that proposed initiative 2023-24 #14 replace it?

- d. If proponents do not intend for proposed initiative 2023-24 #13 to be withdrawn from the 2024 general election ballot, what is the intent of the proponents in also proposing proposed initiative #14?
8. Section 3 of the proposed initiatives 2023-24 #13 and #14 requires the general assembly to enact legislation implementing the proposed initiatives and provides that the initiatives are self-executing, severable, and supersede any conflicting state law.
- a. What kind of legislation do the proponents anticipate the proposed initiatives, if approved, will prompt?
 - b. Section 2-4-204 provides a general severability of statutory provisions for all of Colorado Revised Statutes. How does the proposed section 3 of the proposed initiatives differ from the general severability of statutory provisions found in section 2-4-204?

Technical Comments

There are no technical comments.