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Colorado General Assembly

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MEMORANDUM

To: Suzanne Taherti and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 5, 2025

Subject: Proposed initiative measure 2025-2026 #20 concerning the 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 rates from 4.40% to 4.35% for the 2027 tax year and from 4.35% to 4.20% for the 2028 tax year and every year thereafter.

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. The state may be required to issue a Taxpayer's Bill of Rights (TABOR) refund to taxpayers for the 2027-2028 budget year or another future budget year. If this is the case, reducing the income tax rate would reduce the amount of state revenue required to be refunded to taxpayers under subsection (7) of TABOR. Is this the proponents' intent?

4. 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?

5. Proposed initiative 2025-26 #21, 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. Do the proponents intend for both proposed initiatives to appear on the 2026 general election ballot?

6. Sections 39-22-104 (1.7)(d) and 39-22-301 (1)(d)(I)(L), C.R.S., of the proposed initiative change the income tax rate for "the income tax year commencing on or after January 1, 2027" to 4.35% and the proposed initiative also changes the income tax rate for tax years beginning on or after January 1, 2028, to 4.20%. To reflect the fact that not all tax years begin on January 1, and avoid potential ambiguity with respect to which rates apply to which tax years, would the proponents consider amending sections 39-22-104 (1.7)(d) and 39-22-301 (1)(d)(I)(L), C.R.S., to instead

state "For income tax years commencing on or after January 1, 2027, BUT BEFORE JANUARY 1, 2028,"?.

7. There is no corresponding amending clause in section 3 of the proposed initiative. Do the proponents intend section 3 be added as statutory language? If so, what section of the Colorado Revised Statutes does section 3 amend or add to?

8. Section 3 states that for the first full fiscal year following passage, any reduction in state revenue due to the reduction in state income tax rate will reduce funding for the Colorado Department of Revenue and the Colorado Department of Personnel. Is it the proponents' intent for the reduction in funding to be equivalent to the reduction in state revenue caused by the decreased state income tax rate? If so, is it the proponents' intent for the reduction in funding to the Department of Revenue and Department of Personnel to be equal among the two departments? If not, what percentage in funding reduction will the Department of Revenue and the Department of Personnel receive?

9. In state fiscal year 2023-24, the Department of Revenue received a $153 million General Fund appropriation, and the Department of Personnel received a $44 million General Fund appropriation, for about $198 million total. A reduction in the state income tax rate from 4.40% to 4.20% would have decreased state General Fund revenue by about $580 million.

    a. How should Section 3 of the proposed initiative be interpreted if the revenue reduction in the measure exceeds prior year General Fund appropriations to the listed departments?

    b. Does Section 3 require that the General Assembly fully defund the programs in the Department of Revenue and the Department of Personnel that receive appropriations from the General Fund?

    c. For example, the Taxation Business Group in the Department of Revenue is responsible for the administration and collection of state income taxes, state sales taxes, and other state taxes. The Taxation Business Group receives about 96 percent of its funding from the General Fund. Does Section 3 require that funding to this section of the Department of Revenue be reduced by 96 percent in FY 2027-28?

    d. When funding to a program is cut, e.g. from a cash fund or federal funds, the General Assembly usually considers whether appropriations from the General Fund are required in order for the program to continue to implement the requirements of state law. In this case, the measure appears to disallow the appropriation of General Fund money to restore the lost funding. If there is no other source of funding available for the program, do the proponents intend that the statutory requirements of the program simply not be fulfilled?

e. From what base level does Section 3 require that appropriations be reduced? For example, if Section 3 requires reductions in FY 2027-28, are these calculated from the FY 2026-27 level?

10. Section 4 of the proposed initiative repeals Section 39-22-627, C.R.S., which creates temporary income tax rate cuts to refund a portion of state TABOR refund obligations in future fiscal years. If that section is repealed, TABOR refunds will be paid through other refund mechanisms instead. Is this the proponents' intent?

11. Does Section 4 fall within the single subject of the proposed initiative?

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. The proposed initiative does not include the state income tax rate in a numerical manner for the 2028 tax year but includes the numerical value in parenthesis for the 2029 tax year and each tax year thereafter. It is not standard practice for the state income tax rate to be included in parenthesis in numerical digits. Would the proponents consider omitting the parenthesis with the respective state income tax rate in numerical digits in sections 39-22-104 (1.7)(e) and 39-22-301 (1)(d)(I)(M) C.R.S.

2. In the proposed initiative there is existing language missing from the headnotes of the C.R.S. sections being amended. For example, in the headnote for section 39-22-104, C.R.S., in section 1 of the initiative, after "**single rate**", "**report - tax preference performance statement**" is missing. In section 39-22-301, C.R.S., in section 2 of the proposed initiative, "**repeal**" is missing from the end of the headnote. Would the proponents consider adding missing language to the headnotes unless the proponents are specifically intending to delete such language?

3. If the proponents intend for section 3 of the proposed initiative to become statutory language and make changes to the proposed initiative to that effect:

a. It is standard practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-1-117." It is not necessary to include "C.R.S." in the reference.

b. The first letters of "department of revenue" and "department of personnel" should not be large-capitalized.

4. The repeal of section 39-22-627 will result in necessary conforming amendments to other sections of the Colorado Revised Statutes. Would the proponents considering making conforming amendments to remove cross references to section 39-22-627? These include conforming amendments in sections 39-22-2004 (1)(a), 39-22-2004 (d) (I) and (II), 39-3-210 (1)(a), and 39-26-901 (1)(c).