

STATE OF COLORADO

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MEMORANDUM

October 28, 2002

TO: Douglas Bruce and Jeffrey Wright

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #5, concerning Tax Cuts - Amend TABOR

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 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.

Proposal 2003-2004 #2, an earlier version of this initiative, was the subject of a memorandum dated October 17, 2002, and it was discussed at a hearing on October 22, 2002. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing, unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To amend section 20 of article X of the Colorado constitution by adding a new paragraph (d)

- to subsection (8).
2. To provide a tax cut of \$25 for 2005 taxes, that shall be increased by \$25 each year thereafter, for each of the following:
 - a. Utility and television account customer tax and franchise charge;
 - b. Vehicle sales, use, and ownership tax, and real estate transfer tax, on each \$25,000 of taxable value, and fraction thereof;
 - c. Yearly income tax on each \$25,000 of state taxable income, and fraction thereof, up to \$100,000 paid in 2006 and each year thereafter;
 - d. Occupation tax; and
 - e. Property tax total levied by each district paid in 2006 and each year thereafter.
 3. To specify the following exceptions:
 - a. In November of even-numbered years, district voters may lower or cancel one or more future tax cuts for the next one or two years only. In November 2005, district voters may lower or cancel the 2005 income and property tax cuts.
 - b. If property tax would be a majority of their next year's cash revenue after excluding gifts, federal funds, bond proceeds, and that year's added property tax cut, districts may approve adding \$5 as that year's real property tax cut.
 - c. Districts may approve a delay only in adding that part of their next year's tax cuts which would result in that year's cash revenue from district taxes and other districts growing less than current year inflation. However, a delayed amount shall never be reduced, and shall be added back each year to the extent such revenue growth exceeds prior year inflation.
 - d. Districts may offer a choice on each tax bill, to allow taxpayers to reject each tax cut.
 4. To specify the following enforcement provisions:
 - a. That lowering or canceling the tax cuts is a tax increase;
 - b. That districts with any petition process shall have exception (I) ballot issues by initiative petition only, adapting state signature requirements and filing deadlines;
 - c. That violation of revenue limits in any approved exception (II) or (III) shall void that approval, and districts shall refund to district taxpayers, within 120 days after the year ends, twice the tax cut amount withheld because of that approval;

- d. That multiple-year tax cut totals shall use exception (I) and (II) reduced amounts for the years approved;
- e. That exceptions shall be in whole dollars, are not gifts, and shall not reduce the tax cuts after the tax cuts take effect;
- f. That the tax cuts shall apply to each tax on each tax bill, and be in addition to any other tax cut or revenue reduction or refund;
- g. That the tax cuts shall not lower the minimum yearly revenue needed to pay bonds issued before 2005; and
- h. That the state shall audit itself and each local district yearly for full compliance, and enforce strictly the tax cuts and exceptions.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Substantive questions:

1. With regard to exception (II), which in certain defined circumstances allows a district to approve adding \$5 as the real property tax cut increase:
 - a. The language of exception (II) was amended to add "that year's added property tax cut" as an exclusion from the next year's cash revenue. Does "that year's" mean the next year's? Does the added language mean that when projecting the next year's cash revenue, a district should project the property tax revenue as if there were no \$25 tax cut increase for the next year? For example, if a district was trying to determine whether exception (II) applied in 2006 for the 2005 property taxes, would the district project its revenue from property tax as if there was no tax cut for such taxes? If no exceptions applied and there was a \$25 property tax cut in 2006, would the district project the income collected from the property tax in 2007 for the 2006 property tax as if there was a \$25 tax cut for each taxpayer, \$25 being the amount of the first year tax cut? Given the same facts in the preceding sentence, what if the district used exception (III) and delayed the \$25 tax cut for property tax in year 2006? How would the district project the revenue for 2007?
 - b. If the conditions are met, "districts may approve adding \$5 as that year's real property tax cut." The word "next" was included in the prior draft to modify the word "year's", but was deleted by the proponents in this version. Does this deletion change the meaning of the sentence? If so, how?
2. The proponents added the words "and be" to the sixth sentence of the enforcement section,

which pertains to the application of tax cuts on each tax bill. Does this additional language change the meaning of the sentence? If so, how?