STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

March 23, 2011

TO: Senator Rollie Heath and Richard Valenty

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #22, concerning an increase in state taxes

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.

An earlier version of this proposed initiative, proposed initiative 2011-2012 #19, was the subject of a memorandum dated March 11, 2011. Proposed initiative 2011-2012 #19 was discussed at a public meeting on March 14, 2011. The comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed initiative appear to be:

1. For income tax years beginning on or after January 1, 2012, imposing a five percent tax on the federal taxable income of every individual, estate, and trust.

2. For income tax years beginning on or after January 1, 2012, imposing a five percent tax on the Colorado net income of each domestic C corporation and foreign C corporation.

3. Beginning January 1, 2012, imposing a three percent sales tax on all sales of commodities and services in the state and a three percent use tax on the storage, use, or consumption of tangible personal property purchased at retail in the state.

4. Stating that the additional revenue raised by the tax increases referenced above shall be spent only to fund education, including higher education, and that such additional revenue shall be used in addition to, and not as a substitute for, funds otherwise appropriated by the General Assembly for education, including higher education.

Technical Comments

The technical comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #19 are applicable to proposed initiative 2011-2012 #22 and, as such, will not be repeated. No new technical comments were raised by this proposed initiative.

Substantive Comments and Questions

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #19 are applicable to proposed initiative 2011-2012 #22 and, as such, will not be repeated. However, the following new substantive questions have arisen:

1. In connection with the increase in the income tax included in the measure, is it your intention to also adjust the withholding rate to reflect such increase? If so, a conforming amendment is necessary to section 39-22-604 (18) (a) and (b), C.R.S., which reference the current income tax rate of 4.63%.

2. Pursuant to sections 39-26-105 and 39-26-112, C.R.S., vendors may retain a "fee" for collecting the sales tax. By increasing the sales tax rate and maintaining the same vendor fee, which is calculated as a percentage of sales taxes collected, the amount retained by vendors will increase proportionately with the increase in the tax rate. Is this your intent?

3. Section 39-22-627, C.R.S., creates a temporary income tax rate reduction as a mechanism to refund revenues in excess of the constitutional limit on fiscal year spending (commonly referred to as the TABOR surplus). Specifically, it would reduce the income tax rate from 4.63% to 4.5%. Is the proposed ballot initiative intended to impact this mechanism for refunding excess revenue? In other words, would the rate reduction be reduced from 5% to 4.5%? The temporary income tax rate reduction mechanism is triggered by a TABOR surplus refund large enough to support the rate reduction and to allow for the earned income tax credit refund mechanism. Therefore, a larger refund would be necessary to trigger the rate reduction if the reduction is from 5% to 4.5% than from 4.63% to 4.5%.