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Colorado General Assembly

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MEMORANDUM

July 1, 2010

TO: Bill Kirton and Nora Neureiter

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #8 concerning State Income and Business Personal Property Tax

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.

Proposed initiative 2011-2012 #7 was submitted along with proposed initiative 2011-2012 #8. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2011-2012 #7, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed constitutional amendment appear to be:

1. To repeal the prohibition on: New real property transfer taxes and rate increases; state

property taxes; local district income taxes; and income tax rate increases or new definitions of taxable income before the next year;

2. To repeal the requirement that there be a single income tax rate and replace it with a graduated income tax, which should be established by law;

3. To establish a permanent earned income tax credit against state income taxes;

4. To repeal the business personal property tax and require the state to reimburse local governments for revenue lost as a result of the repeal; and

5. To expand the powers of the Colorado Supreme Court to include making tax laws in certain limited circumstances.

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. Section 20 (8) of article X of the Colorado constitution currently consists of paragraphs (a), (b), and (c). Therefore, rather than adding new paragraphs (f) and (g), the proposed initiative should add new paragraphs (d) and (e) to follow the existing provisions.

2. If your intention is to amend section 20 (8) (a) and add new sections 20 (8) (d) and 20 (8) (e) to article X of the Colorado constitution, include an amending clause that reads as follows:

   > Section 20 (8) (a) of the constitution of the state of Colorado is amended, and the said section 20 (8) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

3. Section 20 (8) (f) of the proposed initiative contains a reference to "sections 20 (8) (a), (d), and (e)". With respect to this reference:

   a. Sections 20 (8) (d) and 20 (8) (e) of article X do not currently exist in the Colorado constitution and they are not contained in the proposed initiative as it is currently written. Please change this reference to ensure that the initiative is referencing the correct provisions.

   b. Please consider rewriting the reference as follows to conform to standard drafting practice: "SECTIONS 20 (8) (a), 20 (8) (d), AND 20 (8) (e) OF THIS ARTICLE".

4. Ensure that the proposed initiative contains no typographical errors. For example, in section 20 (8) (f), "January 1. 2013," should be written as "JANUARY 1, 2013,".

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. Why require a bill to eliminate the business personal property tax rather than simply eliminate it in the proposed initiative?

3. Assuming compliance with the prior voter approval requirement, does the proposed initiative limit the authority of the General Assembly to recreate the business personal property tax after January 1, 2013?

4. Section 8 (b) of article X of the constitution authorizes districts to "enact cumulative uniform exemptions and credits to reduce or end business personal property taxes." Will this provision be obsolete after January 1, 2013?

5. If the General Assembly fails to enact legislation eliminating the business personal property tax or the governor vetoes it, would the business personal property tax still be collected for property tax years on or after January 1, 2013?

6. While the proposed initiative requires the General Assembly pass and the governor to sign a bill eliminating the business personal property tax, it does not appear to specify that the law must take effect by a certain date. In the absence of a deadline, the General Assembly would appear to be free to delay the implementation of the new tax law for as long as it deems appropriate. Is that your intention?

7. What is the first property tax year that you intend business personal property to be exempt from property tax?

8. In recent years, bills have been introduced in the General Assembly to phase-out the business personal property tax. Does the proposed initiative permit the General Assembly to adopt this approach, or must it eliminate the tax all at once?

9. Will the elimination of the business personal property tax affect the ability of a local government to collect property taxes owed prior to the repeal?

10. Does "revenue lost" mean revenue lost due to the elimination of the business personal property tax?

11. Does property tax have a value on a particular day? Does the "value of business personal property tax to the district on December 31, 2010" mean the tax collected in 2010 for the 2009 property tax year, the tax collected in 2011 for the 2010 property tax year, or something else?

12. Is a local government that does not currently collect business personal property tax eligible for reimbursement?

13. Insofar as the state can backfill any lost revenue to a school district through an increase in the state's share of public school funding, is it necessary for the state to reimburse a school district directly?

14. Who determines the amount of the reimbursement? Is it the state, a local government, or some combination of both? What happens if the state and local government disagree over the amount of reimbursement?

15. Must the reimbursement be made for each year for which property tax revenue is lost due to the elimination of the business personal property tax? Could the General Assembly delay the reimbursement?

16. Once set, can the reimbursement amount based on December 31, 2010, be changed? For example, can the amount be increased by inflation or decreased if there is a measurable decrease in the amount of business personal property located within the boundaries of a district?

17. If the reimbursement amount to districts is based on the business personal property tax value on December 31, 2010, the reimbursement amount will be different from the revenue amount that districts would have received if the business personal property tax were in place. Generally, the amount of business personal property tax increases over time and, thus, if the reimbursement amount is fixed based upon the December 31, 2010, value, many districts will generally receive less revenue than otherwise under the proposed initiative over time. However, in some cases, districts will receive more than otherwise, such as if the district loses business personal property value over time compared with the December 31, 2010, value. Is this your intent?

18. Will the expense of reimbursing local governments reduce state spending on other programs? Is it your intention that the lost revenue to the state associated with the local government reimbursement be offset by an increase in revenue from the new graduated income tax?

19. It is unclear what paragraphs (d) and (e) are. (See technical question 3a.) What are the conditions necessary to the elimination of the business personal property tax?

20. It appears that the reimbursement to local governments would be considered "fiscal year spending", as defined in section 20 (2) (e) of article X of the state constitution, and if so, would be subject to the limit on state fiscal year spending set forth in section 20 (7) of article X of the state constitution. Is that your intention?

21. Why require a bill to create a permanent earned income tax credit rather than simply doing so in the proposed initiative?

22. Does the "federal credit" mean the federal earned income tax credit, which is established in

section 26 U.S.C. sec. 32?

23. Is eligibility for the state earned income tax credit the same as for the federal earned income tax credit?

24. What is the rationale for the value of the permanent earned income tax credit (20 % of the federal credit) in the proposed initiative? How was this value determined?

25. Would the General Assembly have the power to adjust the value of the state earned income tax credit?

26. Could the General Assembly limit the amount of the credit that may be claimed in a particular year or delay a taxpayer from claiming the earned income tax credit?

27. Is it your intention that the credit should be refundable?

28. If the federal earned income tax credit is eliminated, the value of the state credit would be zero. Is that your intention?

29. If the federal earned income tax credit is replaced with a successor credit that is similar but not entirely the same, would the state earned income tax credit be determined in reference to the successor credit?