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MEMORANDUM

March 16, 2011

TO: Jon Caldara and Mike Kraus

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #20, concerning income 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.

Purposes

The major purpose of the proposed initiative is to reduce the state income tax rate from 4.63% to 4.5% of taxable income for tax years commencing on or after January 1, 2012.

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. It is standard drafting practice to use SMALL CAPITAL LETTERS, rather than ALL CAPS, to show the language being added to the Colorado Revised Statutes.

2. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.
3. It is standard drafting practice to write section numbers in bold-face type.
4. Each statutory section should include the headnote currently printed in the Colorado Revised Statutes. For example:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (1.7) Except as otherwise...

5. Each statutory section being amended should be preceded by a separate amending clause explaining how the law is being changed. The general amending clause in the proposed initiative should be replaced with separate, specific amending clauses, which should read:

SECTION 1. 39-22-104 (1.7) and (2), Colorado Revised Statutes, are amended, and the said 39-22-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

SECTION 2. 39-22-301 (1) (d) (I) (I), Colorado Revised Statutes, is amended, and the said 39-22-301 (1) (d) (I) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

6. It is standard drafting practice to include spaces between the parentheses when citing a statute. For example: 39-22-301 (1) (d) (I) (I) not 39-22-301(1)(d)(I)(I).
7. It is standard drafting practice to include any introductory portions that are associated with the subsection/paragraph/subparagraph/sub-subparagraph you are amending. For example, the section of the proposed initiative amending section 39-22-301 (1) (d) (I) (I), Colorado Revised Statutes, and adding a new sub-subparagraph (J) should appear as follows:

39-22-301. Corporate tax imposed. (1) (d) (I) A tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount of the net income of such C corporation during the year derived from sources within Colorado as set forth in the following schedule of rates:

(I) Except as otherwise provided in section 39-22-627, for income tax years commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2012, four and sixty-three one hundredths percent of the Colorado net income;

(J) EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-22-627, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2012, FOUR AND ONE-HALF PERCENT OF THE COLORADO NET INCOME.

8. As illustrated in technical comment #7, sub-subparagraph (I) should now end in a semicolon, rather than a period, because it is no longer the end of a series.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The proposed initiative does not appear to qualify for an odd-numbered year election pursuant to section 1-41-102, Colorado Revised Statutes, so the earliest the proposed initiative could take effect would be upon proclamation of the governor after the November 2012 election. As such, a large portion of the income tax withholding payments and estimated tax payments for the 2012 tax year will be made using the current rate of 4.63%. Accordingly, if the rate is reduced for that tax year, the state will have to provide significant refunds to taxpayers. Is this your intention?
3. If your intention is to also adjust the withholding rate, then a conforming amendment will be necessary in the introductory portion to section 39-22-604 (18) (a), Colorado Revised Statutes, and section 39-22-604 (18) (b), Colorado Revised Statutes, which reference the current income tax rate of 4.63%.
4. If the income tax rate is reduced without a corresponding decrease in the alternative minimum tax set forth in section 39-22-105, Colorado Revised Statutes, then the alternative minimum tax would apply in more instances. Is this your intention?
5. Section 39-22-627, Colorado Revised Statutes, creates a temporary income tax rate reduction as a mechanism to refund revenues in excess of the constitutional limit on fiscal year spending. Specifically, it would reduce the income tax rate from 4.63% to 4.5%. As the proposed initiative reduces the income tax rate to 4.5%, it appears to eliminate the temporary rate reduction. Is this your intention? If so, the phrase "Except as otherwise provided in section 39-22-627" does not appear to be necessary, and section 39-22-627 could be repealed. If it is not your intention to eliminate the temporary rate reduction, then section 39-22-627 would need to be amended.
6. Section 39-22-601 (10), Colorado Revised Statutes, requires the executive director of the department of revenue to include a statement on every income tax return form describing past decreases in the income tax rate. If you would like this form to reflect the reduced rate in the proposed initiative, then this section needs to be amended.
7. Currently, there is another proposed initiative that would raise the state income tax rate for 3 years beginning with the 2012 tax year. If that initiative or any other measure is approved by voters at the 2011 odd-numbered year election, is it nonetheless your intention to reduce the tax rate for the 2012 tax year? If the tax rate is increased at the 2011 odd-numbered year election, it would exacerbate the issue identified in question #2.

8. Assuming that other sources of general fund revenue are not adjusted to offset the revenue impact of reducing the income tax rate from 4.63% to 4.5%, the revenue available for expenditure from the general fund will be reduced as a result of the proposed initiative. Is it your intention to reduce the amount of general fund revenue available for expenditure by the general assembly?
9. Does the proposed initiative have any effect on any income tax credits specified in article 22 of title 39, Colorado Revised Statutes?
10. Does the proposed initiative in any way impact the requirement that a percentage of income tax be deposited in the state education fund pursuant to section 17 (4) of article IX of the Colorado constitution?