

STATE OF COLORADO

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MEMORANDUM

July 20, 2005

TO: Douglas Bruce and Jeffrey Wright

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #45, concerning Tax Cuts

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.

Earlier versions of this initiative were the subject of a memorandum dated April 27, 2005, and June 13, 2005. Proposal 2005-2006 #30 was discussed at a hearing on April 29, 2005, and proposal 2005-2006 #39 was discussed at a hearing on June 15, 2005. 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 in 2007, that shall be increased by \$25 each year thereafter, for each of the following:
 - a. Utility, internet, and television account customer-paid tax, franchise charge, and other public charge, except a 911 charge;
 - b. Vehicle sales, use, lease, rental, and ownership tax and public charge on each \$10,000 of taxable value, and part thereof;
 - c. Occupation tax and public charge;
 - d. Payment in lieu of tax;
 - e. Yearly income tax on each \$10,000 of state taxable income, and part thereof, up to \$40,000.
3. To reduce the state income tax rate to 4.6% in 2007, to further reduce the state income tax rate to 4.55% in 2008; and to specify that the income tax rate after 2008 shall not be more than 4.5%.
4. To specify the following exceptions:
 - a. In November of even-numbered years and by initiative petition only, district voters may lower or cancel for the next two years only, one or more tax cuts that have not yet taken effect.
 - b. Each district may approve a delay only in adding that part of its next year's tax cuts which would result in that year's total tax revenue growing less than current year inflation. Until fully restored, each delayed part shall be added back to the tax cuts to the extent such revenue growth in each later year exceeds prior year inflation.
 - c. On each tax bill, each taxpayer may be given the choice to refuse the entire tax cut on that bill.
5. To specify the following enforcement provisions:

- a. That the tax cuts shall apply to each tax and charge on each bill and return, and shall be in addition to any other tax cut or revenue reduction or refund;
- b. That "occupation tax and public charge" also includes employment, business, and professional license, permit, and registration charges;
- c. That payments in lieu of tax shall be deemed charges passed on to customers as a percentage of total costs, to be lowered yearly on each regular customer account, or lowered per bill if no regular customer account exists;
- d. That lowering or canceling the tax cuts is a tax increase;
- e. That the rate of each listed charge shall increase by voter approval only;
- f. That Exceptions (I) and (II) shall be in whole dollars;
- g. That exceptions are not gifts;
- h. That starting in 2007, only to offset the revenue effects of the tax cuts required pursuant to this proposed initiative, the state shall end all income tax credits not for overpayments or existing contracts;
- i. That the state shall audit itself and each local entity yearly for full compliance, and enforce strictly the tax cuts and exceptions; and
- j. That successful plaintiffs enforcing the provisions of the proposed initiative *shall always* receive all costs and reasonable attorney fees, contingent or not, and that defendants shall receive neither costs nor attorney fees.
- k. That provisions of the proposed initiative shall be amended, superseded, or repealed by voter-approved petition only.

Comments and Questions

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

Substantive questions:

1. With respect to the term "rental tax" contained in the first paragraph of the proposed initiative:

- a. What do the proponents mean by the term "rental" tax? Is it distinguishable from a lease tax and, if so, how?
 - b. What types of taxes or charges do the proponents intend to cover by the use of this term?
 - c. How will the tax cut be applied to a rental tax?
2. With respect to the phrase "payment in lieu of tax" in the first paragraph of the proposed measure:
- a. What do the proponents mean by this phrase?
 - b. What type of payments do the proponents intend to cover by the use of this phrase? Does it cover payments made to local governments by the federal government to offset the loss of tax revenues on federal lands that cannot be taxed by local governments? Does it include unitemized property tax that a landlord includes as part of a lease payment?
 - c. How do the proponents intend for the amount of such payments to be quantified or calculated for purposes of the proposed initiative?
 - d. How will the tax cut be applied to such payments in lieu of taxes?
 - e. In order to make the proposed initiative more easily understood, would the proponents consider clarifying their use of the phrase "payment in lieu of tax"?
3. Previous versions of this measure provided that each taxpayer may be given "a" choice to refuse an entire tax cut. That has been changed in the current version to allow "the" choice to refuse an entire tax cut. What is the proponents' intent with respect to this change?
4. In connection with the enforcement provisions of the proposed initiative, what do the proponents mean by the phrase "and return", which follows the phrase "[t]he tax cuts shall apply to each tax and charge on each bill and return." In order to make the proposed initiative more easily understood, would the proponents consider clarifying their use of the phrase "and return"?
5. With respect to the new language added to the enforcement section of the proposed initiative relating to payments in lieu of taxes:
- a. What do the proponents mean by stating "[p]ayments in lieu of tax shall be deemed charges passed on to customers as a percentage of total costs...."?

- b. What are the "total costs" referenced in this sentence?
 - c. Why are payments in lieu of taxes to be deemed "charges passed on to customers"?
 - d. Who are the "customers" to which this sentence refers?
 - e. Under the proposed initiative, which item would be "lowered", i.e., is it the "payments" or the "charges"?
 - f. By what process shall the payments/charges be "lowered yearly on each regular customer account, or lowered per bill if no regular customer account exists"? What do the proponents mean by a "regular customer account"? Under what circumstances will "no regular customer account exist"?
 - g. Can both the customer and the entity originally liable for the charge claim a tax cut?
 - h. By how much shall such payments/charges be lowered under the proposed initiative? Would the proponents consider clarifying the text of the proposed initiative so that its requirements with respect to this issue may be better understood?
6. What is the proponents' intent in placing the word "only" before the phrase "to offset the revenue effects of these tax cuts...." in the text of the proposed initiative?
7. What is the proponents' intent in substituting the word "shall" for "may" with respect to the requirement that, starting in 2007, the state shall end the specified form of income tax credits?
- a. Would this provision apply to all credits authorized by statute? Would it prevent the enactment of future credits?
 - b. For what income tax years would credits be ended? Tax years commencing on or after January 1, 2007?
 - c. Would this provision affect the ability of taxpayers to claim credits carried forward from previous tax years?
 - d. How does the mandatory elimination of tax credits and the corresponding increase in tax liability relate to the single subject of tax cuts?
8. With respect to the last sentence of the proposed initiative:
- a. What do the proponents intend by their use of the term "voter-approved petition"?

- b. What is the proponents' intent in stating that the proposed initiative "shall be amended, superseded, or repealed by voter-approved petition only"?
- c. If approved by the people, the proposed initiative would become part of the state constitution. As such, it could only be amended by a concurrent resolution passed by the voters upon submission on the ballot by a 2/3 majority of each chamber of the General Assembly or by a citizen initiative, although some or all of its provisions could theoretically be struck down by a court if subject to judicial challenge. Is it the proponents' intent that the proposed initiative would only be able to be amended by a citizen initiative and not by a concurrent resolution proposed by the General Assembly? To what extent do the proponents intend that the proposed initiative be read as restricting the ability of a court to declare all or part of the measure unconstitutional? How does this provision relate to the single subject of the measure?