

# STATE OF COLORADO

## Colorado General Assembly

Kirk Mlinek, Director  
Legislative Council Staff

**Colorado Legislative Council**  
029 State Capitol Building  
Denver, Colorado 80203-1784  
Telephone (303) 866-3521  
Facsimile (303) 866-3855  
TDD (303) 866-3472  
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director  
Office of Legislative Legal Services

**Office Of Legislative Legal Services**  
091 State Capitol Building  
Denver, Colorado 80203-1782  
Telephone (303) 866-2045  
Facsimile (303) 866-4157  
E-Mail: olls.ga@state.co.us

### MEMORANDUM

February 15, 2006

**TO:** Jon Caldara and Beth Skinner

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2005-2006 #84, concerning the Home Energy Adjustment Tax Rebate

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 purposes of the proposed initiative, which amends the Colorado constitution, appear to be:

1. To limit the amount of oil and gas severance taxes that the state may collect and keep in a given calendar year beginning in 2006;
2. To refund to taxpayers any oil and gas severance taxes collected by the state in excess of the amount that it is permitted to keep in order to offset high home energy costs; and
3. To establish the method for refunding the excess amount of oil and gas severance taxes to

taxpayers.

### Comments and Questions

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

#### Technical comments:

The following comments are technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices.

1. The phrase, "Be it Enacted by the People of the State of Colorado", which is required by article V, section 1 (8) of the Colorado constitution, does not need to be capitalized. Also, there is an extraneous hyphen at the beginning of the phrase.
2. The following comments relate to the enacting clause, which reads: "THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW ARTICLE XIX TO READ:"
  - a. There is already an article XIX in the Colorado constitution. If the proponents would like to create a new article, it should be article XXIX. As it is only a single section, this could be added to an existing article in the Colorado constitution. Some alternatives where it could be placed are section 22 of article X or section 15 of article XVIII.
  - b. The article number does not need to be included.
  - c. Only the phrase, "BY THE ADDITION OF A NEW ARTICLE (SECTION):" needs to be in capital letters. The remainder of the phrase can be in regular type.
3. The following comments relate to the headnote, which reads: "**HOME ENERGY ADJUSTMENT TAX-REBATE (H.E.A.T.)**:"
  - a. It is standard drafting practice to include the section number of the new section of law. For example, if you create a new article, it would be "**Section 1.**", if it were a new section in article XVIII, it would be "**Section 15.**".
  - b. Only the first letter of the first word of the headnote should be capitalized. The remainder of the headnote can be in regular type.
  - c. The term "**tax-rebate**" does not need to be hyphenated. This phrase is also used in sub-subparagraph (A).
  - d. It is not standard drafting practice to include an acronym in the section headnote.

4. It is standard drafting practice to use small capital letters to show the language being added to the Colorado constitution. For example, the first sentence would begin "ALL OIL AND GAS SEVERANCE TAXES...".
5. The word "to" on the second line in subsection (1) appears to be spelled "t[zero]" rather than "to".
6. Is it your intention to define "inflation" as the "consumer price index"? If so, rather than defining the term by using a parenthetical, would you consider adding a subsection for definitions to the beginning of the proposed initiative, to read as follows:  

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "INFLATION" MEANS THE CONSUMER PRICE INDEX.?
7. It would read better if the phrase "BASED ON NUMBER" in the second sentence of sub-subparagraph (A), was changed to "BASED ON THE NUMBER".
8. Constitutional provisions are usually divided into component parts using the following structure: Subsection, or, for example, "(1)", followed by paragraphs, or, for example, "(a)" followed by subparagraphs, for example, "(I)", ending with sub-subparagraphs, or, for example, "(A)". The proposed initiative has a subsection (1) followed by sub-subparagraphs (A) to (D). It appears that the most appropriate division for the proposed initiative, would be to create subsections (1) to (5).
9. Numbers should be spelled out, so that "\$5.00" should be "FIVE DOLLARS".

Substantive comments and questions:

1. In general, the timing of the refund required by the proposed initiative is unclear. Is it your intention that the refund be made in October of the calendar year after the calendar year that the oil and gas severance tax revenues are collected? (The specific ambiguities are addressed in the subsequent comments questions).
2. The following questions and comments refer to subsection (1) of the proposed initiative:
  - a. What are "oil and gas severance taxes"? Are they limited to sections 39-29-105 and 39-29-107, Colorado Revised Statutes? Do you intend to include federal mineral leasing revenues that the state receives?
  - b. What is the "well head value of oil and gas"?
  - c. The following questions relate to the phrase the "baseline amount collected in calendar year 2005":
    - i. What does this phrase mean?

- ii. Who will calculate the baseline amount?
  - iii. Does "collected" mean received by the department of revenue?
  - iv. Would it include any of the following: Taxes paid in 2005 for the severance of oil and gas in 2004; estimated payments made in 2005 for the tax that is due in 2006; taxes that were due prior to 2005, but that were not paid until 2005; penalties and interest for any oil and gas severance taxes that are received in 2005; taxes that were due in 2005, but not paid until 2006; or interest or earnings in 2005 on oil and gas taxes that are received in 2005?
  - v. In the absence of further clarification, is it your intention that the general assembly define the phrase "baseline amount collected in calendar year 2005"?
- d. The following questions relate to the phrase "subsequent adjustment for the change in state population":
- i. Who will calculate the state population adjustment?
  - ii. Upon what data will it be based?
  - iii. How often will the subsequent adjustments be made? Annually? Every decade?
  - iv. What period of change will be used to make the adjustment?
  - v. In the absence of further clarification, is it your intention that the general assembly define the "subsequent adjustment for the change in state population"?
- e. The following questions relate to subsequent adjustments for inflation:
- i. What is "inflation"? Is it based on the consumer price index?
  - ii. Is the consumer price index used in subsection (1) of the proposed initiative the index published by the Bureau of Labor Statistics in the United States Department of Labor?
  - iii. How often will the subsequent adjustments be made?
  - iv. What period of inflation will be used to make the adjustment?
  - v. In the absence of further clarification, is it your intention that the general assembly define the "subsequent adjustment for the change in state

population"?

- f. Would a taxpayer who does not pay an energy bill be eligible for the refund?
  - g. Does a taxpayer need to prove that he or she has "high home energy costs" in order to be eligible to receive the refund? If so, how does the taxpayer prove these costs?
  - h. Does a person need to pay state taxes in order to be eligible to receive the refund?
  - i. Would anything prevent the general assembly from enacting exemptions or credits that have the effect of reducing the amount collected and refunded?
3. The following questions relate to sub-subparagraph (A) of the proposed initiative:
- a. Are the "Colorado full-year resident individual tax returns" the Colorado individual income tax returns?
  - b. Are dependents claimed on the Colorado full-year resident individual tax returns? If not, are you referring to the number of dependents claimed by Colorado full-resident individuals on their federal income tax return?
  - c. Does the state currently have the information on the number of dependents claimed by Colorado full-time resident individuals? If not, how will it ascertain this number?
  - d. How will the refund be calculated based on the language of the proposed initiative?
  - e. Is a refund to be made in the October of the year that the excess oil and gas severance tax has been collected? Would this even be possible, insofar as it does not seem possible to know the exact amount of the total excess oil and gas tax collected prior to the end of the year?
  - f. What does the phrase "head of a household" mean?
  - g. Based on the language that is required to go on a check, it appears that it is the proponents' intention that the check be paid in October of the year following the year that the excess oil and gas severance tax has been collected. Is this correct? If so, would you consider changing the first two sentences to clarify that the refund occurs in the year after the tax is collected?
  - h. What state agency or department will be responsible for mailing the checks to the heads of household?
  - i. It does not appear that the state agency or department will be able to use any of the oil and gas severance taxes collected. How will the state agency or department that administers this program pay for the administrative costs?

- j. Does the requirement that the check clearly state certain information mean that the information must actually be printed on the check? If so, where would it go?
  - k. Does the requirement that a check contain certain information preclude the state from paying through a direct deposit?
4. The following questions and comments relate to sub-subparagraph (B) of the proposed initiative:
- a. What happens to the excess oil and gas severance tax dollars if they are not refunded pursuant to sub-subparagraph (B)?
  - b. The calculation in sub-subparagraph (A) of the proposed initiative is only based on the yearly total. It does not seem to allow the amount that is not refunded pursuant to the five dollar minimum requirement to be refunded in a subsequent year. If it is your intention that such moneys should be refunded in a subsequent year in which the single dependent refund amount is five dollars or greater, would you consider adding language to clarify this intention?
5. The following questions relate to sub-subparagraph (C) of the proposed initiative:
- a. Does a "separate fund" mean a new fund or just a different fund than the fund in which severance tax dollars are currently held?
  - b. If it is your intention to require the moneys to go to a new fund, would you consider creating the fund in the state treasury and naming it? For example, "[the revenues are] to be deposited in the excess oil and gas tax fund, which is hereby created in the state treasury".
  - c. Section 39-29-108, Colorado Revised Statutes, sets forth the allocation for the receipts realized from the severance tax. How will sub-subparagraph (C) affect this allocation?
  - d. If the revenues are collected throughout the calendar year, how can they be deposited prior to May 1 of each year? If it is May 1 following the calendar year that the revenues are collected, could you clarify this point.
  - e. How will the interest, dividends, and returns that accrue to the fund be used? Similar to the point raised in comment (4) (b) above, the calculation in sub-subparagraph (A) of the proposed initiative is only based on the yearly total, and it does not seem to allow the interest, dividends, or returns to be refunded.
6. The following questions relate to sub-subparagraph (D) of the proposed initiative:
- a. Does the phrase "excess revenues" refer to oil and gas severance tax revenues above the baseline amount described in subsection (1) of the proposed initiative?

- b. Are revenues "accumulated" different from revenues "collected", which is the term used in subsection (1) of the proposed initiative?
  - c. Is the last sentence of the proposed initiative, which requires the excess revenues from 2006 to be refunded in 2007, the exception or the rule? That is, are all refunds to be made in the year following collection, or is this a special circumstance because it would be impossible to follow the May and October deadlines set forth in the proposed initiative for 2006, since the election on the proposed initiative would be held in November 2006?
7. The following questions relate to the interaction of the proposed initiative and section 20 of article X of the Colorado constitution:
- a. If the state received prior voter approval to increase the oil and gas severance tax, would it have any effect on the amount of oil and gas severance tax revenues that the state is permitted to keep? If not, would it be permissible to approve a hundredfold increase in the tax?
  - b. If the voters approved a new tax on the severance of oil and gas, would it have any effect on the amount of oil and gas severance taxes revenues that the state is permitted to keep?
  - c. Section 20 (7) of article X of the Colorado constitution limits the increase in state "fiscal year spending", which is defined to mean "all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales". Would any revenues that the state is required to refund pursuant to the proposed initiative be included in fiscal year spending?
8. Currently the state keeps track of oil and gas severance tax revenues on a fiscal year basis. As such, it would be easier for the state to administer the refund program if the refunds were based on fiscal year collections rather than calendar year collections. Would the proponents consider making this change? If so, it would require restructuring much of the proposed initiative to clarify how the refund would work.