

# 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 28, 2008

TO: Joe Neuhof and Gary Nakarado

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #71, concerning severance 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 2007-2008 #71 was submitted along with proposals 2007-2008 #68, 2007-2008 #69, and 2007-2008 #70, and the four proposed initiatives are substantially similar. Accordingly, the questions and comments set forth in the review and comment memorandums for proposed initiatives 2007-2008 #68, 2007-2008 #69, and 2007-2008 #70 also apply to this proposed initiative, unless the context otherwise requires, and are incorporated herein.

## Purposes

The major purposes of the proposed amendment appear to be:

1. To modify the state severance tax on oil and gas that was collected both before and after January 1, 2009, by:
  - a. Eliminating an exemption for oil wells that have minimal production for taxable years prior to January 1, 2009; and
  - b. Imposing an additional tax on the gross income equal to or in excess of \$300,000 attributable to the sale of oil and gas severed from the earth on or after January 1, 2009.
2. To permit the state to retain and spend all the revenues received from the modified tax on the severance of oil and gas notwithstanding the constitutional limitation on fiscal year spending or any other spending limit; and
3. To modify the distribution of oil and gas tax revenues.

## Comments and Questions

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

### Technical questions:

Each of the technical questions set forth in the review and comment memorandum on proposed initiative 2007-2008 #68 is applicable to proposed initiative 2007-2008 #71 and, as such, will not be repeated here.

### Substantive questions:

1. The following questions relate to the new paragraph (c) added to section 39-29-105 (1), Colorado Revised Statutes:
  - a. The new paragraph (c) purports to establish an additional tax on the gross income equal to or in excess of \$300,000 attributable to the sale of oil and gas severed from the earth on or after January 1, 2009. Is this correct? If paragraph (b) is read in conjunction with the new paragraph (c), any gross income equal to or in excess of \$300,000 attributable to the sale of oil and gas severed from the earth on or after January 1, 2009, would be first taxed at 5% and then taxed again at 3.5%, is that correct? Why did you not increase the rate of taxation for that particular grade of income in paragraph (b) to 8.5%?
  - b. How will this new paragraph (c) modify the estimated payments that are calculated

in section 39-22-606 (5), Colorado Revised Statutes, and owed for a taxable year commencing on or after January 1, 2009?

- c. The new paragraph (c) specifies that any gross income under \$300,000 is taxed at 0%. Why tax up to \$300,000 if the rate is zero? Is this the same thing as exempting the first \$300,000 for each taxpayer from this additional tax?
  - d. You have not included the exemption language for stripper wells in this new paragraph (c). Is it your intent that stripper wells be subject to the additional tax provided in this new paragraph?
2. The following questions relate to the changes made to section 39-29-108 (2), Colorado Revised Statutes:
- a. It appears that only the new revenue generated from the additional tax on gross income will be distributed as specified in the new paragraph (b) of 39-29-108 (2), Colorado Revised Statutes. The remaining revenue will be distributed 50% to the state severance tax trust fund and 50% to the local government severance tax fund. Is that correct?
  - b. You have removed two of five listed distributions that were previously specified in initiatives # 68, #69, and #70. Was that your intent?