

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Ken Malpass and Larry Klayman
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2018
SUBJECT: Proposed initiative measure 2017-2018 #185, concerning a prohibition on the collection of 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 directors of 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 amendment appear to be:

1. To prohibit the collection of income taxes; and
2. To establish criminal sanctions on individuals attempting to collect income taxes.

Substantive Comments and Questions

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

1. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. You have submitted an idea rather than the actual language that would be added to or amended in the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory changes.
2. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
3. In accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? Please indicate through an amending clause, as described in the Technical Comments, where the proposed initiative will be placed.
4. 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?
5. What will be the effective date of the proposed initiative?
6. The proposed initiative states that the sixteenth amendment to the United States constitution was not properly ratified, that "the original constitution limited taxation to direct taxes," and that, therefore, "[n]o tax shall be collected from Colorado Citizens (income tax, social security and Medicare, corporate income taxes, etc.)." Is the intent of the proposed initiative to restrict individuals in Colorado from collecting federal taxes?
 - a. Would all individuals be subject to this prohibition, including employers that withhold taxes for employees in accordance with federal law?
 - b. Would it apply to individuals or companies paying their own taxes?

- c. Would it apply to tax preparers and accountants who are hired for the purpose of assisting individuals in preparing and filing their federal tax returns?
 - d. How would this prohibition affect employers based in Colorado that have employees located in other states? Would those employers be able to withhold federal taxes for their employees in other states?
7. For the purposes of the proposed initiative, what does "direct taxes" mean? Are there some federal taxes that could still be collected in Colorado?
8. Is it your intent to repeal the state income tax, including both the individual and corporate income tax?
- a. If yes, would taxpayers still be able to claim refundable income tax credits?
 - b. Income tax revenue currently accounts for about two-thirds of revenue to the General Fund, the state's main source of funding for operating appropriations. What source(s) of revenue, if any, would offset the loss of income tax revenue to the state?
 - c. Article IX, Section 17 (4)(a) of the Colorado constitution requires that one-third of one percent of federal taxable income be dedicated to the State Education Fund for the purpose of funding public education. Is it your intent to eliminate this source of funding?
 - d. How would the elimination of the income tax interact with the limit on state spending and saving under article X, section 20 (7) of the Colorado constitution? Is it your intent that the limit be reduced by an amount equal to the revenue from income tax?
9. What other state taxes would be affected by the proposed initiative, if any?
10. The proposed initiative states that anyone attempting to collect these taxes shall be subject to fines and imprisonment. How will these penalties for collecting the taxes be determined? How will they be enforced? Are they required to be imposed for every violation or would it be at the discretion of the court in each case?
11. Federal law also imposes fines and penalties on individuals and employers who do not withhold or pay taxes as required by federal tax laws. How will this initiative affect individuals and employers in Colorado who wish to comply

with federal law? Would it be possible for an individual or employer to comply with both federal and state law under the terms of this proposed initiative?

12. Would the state be exposed to litigation if it were to enforce a prohibition on the collection of federal taxes? Have you considered the costs of such potential litigation?
13. Have you considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments?
14. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XX as follows:

SECTION 1. In Colorado Revised Statutes, **add** article XX to title 39 as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example: "In the constitution of the state of Colorado, **amend** section __ of article __ as follows:".

Or, for example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".

3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section and are in bold-face type. For example:

39-2-101. Division created – property tax administrator. There is hereby created...

4. If the initiative proposes an amendment to the Colorado Revised Statutes, please note that the Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
6. If you are amending existing text in the Colorado constitution or the Colorado Revised Statutes, it is standard drafting practice to include the existing text and

to use SMALL CAPITAL LETTERS (rather than ALL CAPS) to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.

7. If you intend to amend the Colorado Revised Statutes, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply," but does not mean that a person has a duty.