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Colorado General Assembly

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MEMORANDUM

TO: Kevin Neal Patterson II and Eric Leveridge
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 6, 2018
SUBJECT: Proposed initiative measure 2017-2018 #157, concerning Policy Changes
Pertaining to State 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.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #133 to #144, were the subject of memoranda dated February 7, 2018, which were discussed at a public meeting on February 9, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution and the Colorado Revised Statutes appear to be:

1. To specify that on and after January 1, 2019, the state income tax rate be increased from 4.63 percent to _____ percent for individuals with federal taxable income (FTI) greater than \$300,000;
2. To expand the qualifications for individuals, caregivers, and students to be eligible to receive a Colorado earned income tax credit (EITC);
3. To require the Department of Revenue to calculate the net increase in income tax revenue and to specify that the money must be used for the Colorado EITC and paid to eligible claimants, "provided that no more than two percent of such moneys may be used to pay the department's reasonable and necessary expenses to administer" the Colorado EITC, and that those expenses be tracked annually;
4. To repeal the existing EITC;
5. To specify that all revenues required for payment of the Colorado EITC and for administrative expenses must be collected and spent as voter-approved revenue changes without regard to any limitation on revenue or spending contained in section 20 of article X of the constitution ("TABOR") or any other law; and
6. To eliminate the state constitutional requirement that all taxable net income be taxed at one rate.

Substantive Comments and Questions

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

1. 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?
2. Proposed sections 39-22-104 (1.8)(a) and (1.8)(c) each include blank spaces. What do the proponents intend with respect to these blanks?

3. With respect to proposed section 39-22-104 (1.8)(d):
 - a. What amount of money do the proponents intend to exempt from TABOR?
 - b. Tax credits are accounted as reductions in revenue, not as expenditures. Do the proponents intend that the expanded Colorado EITC be accounted differently?
 - c. If not, does the proposed initiative both reduce revenue and reduce state fiscal year spending by an amount equal to the revenue reduction?
 - d. If the graduated income tax rate in proposed subsection 39-22-104 (1.8)(a) generates more revenue than the revenue loss attributable to the expanded Colorado EITC, does the difference constitute fiscal year spending for TABOR purposes?
 - e. If the graduated income tax rate in proposed subsection 39-22-104 (1.8)(a) generates less revenue than the revenue loss attributable to the expanded Colorado EITC, does the measure exempt revenue from other sources from fiscal year spending for TABOR purposes?
 - f. The state controller is responsible for preparing a certification of TABOR revenue by September 1 each year. Given that amended income tax returns on which the EITC is claimed may not be finalized by this date, how will the controller determine the amount in subsection (1.8)(d) for the purposes of the September 1 revenue certification?
4. With respect to section 39-22-123.3 (7) and the requirement that "the total moneys attributable to the income tax rate imposed under section 39-22-104 (1.8)... must be used for refundable earned income tax credits":
 - a. What happens to money collected in excess of the amount used for the expanded Colorado EITC and its administration? May the money be saved for future use for this purpose? Must they be refunded to taxpayers?
 - b. What does "refundable" mean in this context? Does this requirement apply only to the portion of the expanded Colorado EITC that is refunded, and not to the amount used to reduce income tax liability?
5. 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 technical comments raised in the memorandum for the previously submitted initiative 2017-2018 #133 are incorporated by reference in this memorandum. There are no new technical comments.