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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Michael Fields
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2022
SUBJECT: Proposed initiative measure 2021-2022 #109, concerning the excess state revenues cap

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 to the Colorado Revised Statutes appear to be:

1. For fiscal year 2023-24, to reduce the excess state revenues cap ("cap") to an amount equal to the cap from fiscal year 2022-23, taking into account certain adjustments, less 0.5% of all federal taxable income.
2. For fiscal year 2024-25 and for each fiscal year thereafter, to set the cap at the amount it was for fiscal year 2023-24, taking into account certain adjustments.

Substantive Comments and Questions

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

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. The following questions concern the internal statutory references within the proposed initiative:
 - a. Sub-subparagraph (H) in the proposed initiative references subsection (6)(b)(I)(B), however the reference is to "the excess state revenues cap for the 2022-2023 fiscal year" which is set forth in subsection (6)(b)(I)(G). Is that the subsection the proponents intend to reference?
 - b. Sub-subparagraph (I) in the proposed initiative references subsection (6)(b)(I)(C), however the reference is to "the excess state revenues cap for the 2023-2024 fiscal year" which, if the proposed initiative becomes law, will be set forth in subsection (6)(b)(I)(H). Is that the sub-subparagraph the proponents intend to reference?
4. Proposed subsection 24-77-103.6 (6)(b)(I)(H) adds "the" before "debt service changes." This word does not appear in other similar calculations of the excess state revenues cap. Is this an errant addition?
5. Regarding the phrase "one-half of one percent on all federal taxable income, as modified by law, of every individual, estate, trust, and corporation, as defined by law":
 - a. After "percent," should the word "of" be used rather than "on"?
 - b. After "defined," should the word "in" be used rather than "by"?

- c. "[F]ederal taxable income, as modified by law" is a phrase that appears in section 17 of article IX of the Colorado constitution. A definition of this phrase appears in section 22-55-102 (6), C.R.S. However, that definition applies only to article 55 of title 22. Do the proponents intend for that definition or a similar definition to apply in this case? If so, would the proponents consider clarifying this?
- d. "[E]very individual, estate, trust, and corporation, as defined in law" is a phrase that appears in section 17 of article IX of the Colorado constitution. Do the proponents intend for the phrase that appears in this proposed initiative, "every individual, estate, trust, and corporation, as defined by law," to be interpreted and administered in the same way as the similar phrase in the Colorado constitution?
- e. For what year should this percentage of taxable income be calculated?
- f. Most taxpayers report taxable income for a tax year that begins on January 1 and ends on December 31. Returns are typically filed by April of the following year, but may not be filed until October for extension filers, or later for taxpayers who fail to meet deadlines. Therefore, taxable income for one year may not be known until late in the following year, or sometime after that, when statistics of income data are reported by the Department of Revenue. For example, the most recent such data on the Department of Revenue's website are for tax year 2018, published in November, 2021.¹
- g. If the proposed initiative requires a calculation of taxable income on a state fiscal year basis, i.e., for a period of time that begins on July 1 and ends on June 30, then the correct amount of taxable income will never be known because income is not reported in this way by taxpayers.
- h. Sections 22-55-103 and 22-55-104, C.R.S., include procedures for estimating taxable income to satisfy the requirements of section 17 of article IX of the Colorado constitution. Do the proponents intend for similar procedures to be used to estimate taxable income for the calculation in the proposed initiative?

¹ <https://cdor.colorado.gov/data-and-reports/statistics-of-income-reports>

- i. The procedures in article 55 of title 22 allow for the correction of errors across multiple fiscal years, since new data that affect past estimates may arrive in later years. However, the proposed initiative only requires a one-time adjustment to the excess state revenues cap. How should errors in the estimate of taxable income be corrected when they are discovered after the initial estimate is made?
 - j. Would the proponents consider instead enumerating a specific dollar amount to be subtracted from the excess state revenues cap for the 2022-23 fiscal year in calculating the cap for fiscal year 2023-24?
6. If taxable income data for 2018 were used, the proposed initiative would reduce the amount of money that the state is permitted to retain and spend by about \$760 million. Is this the proponents' intent?
7. If approved by voters, would the proposed initiative constrain the voters' earlier authorization for the state to retain and spend revenue collected up to the excess state revenues cap as defined in Referendum C?
8. Would an act by the General Assembly to return the excess state revenues cap to its current law level require voter approval under section 20 (4)(a) of article X of the Colorado constitution?

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. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 1 of the proposed initiative and be in bold-face type.
2. 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
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
 4. When adding new sub-subparagraphs following an introductory portion, it is standard drafting practice to amend the preceding sub-subparagraph to strike "~~and~~", and then add "; AND" to the end of the second to last sub-subparagraph. For example, in section 1 of the proposed initiative, strike the "and" at the end of subsection (6)(b)(I)(F) and add "; AND" to the end of subsection (6)(b)(I)(H).
 5. In subsection (6)(b)(I)(H) and (6)(b)(I)(I), the paragraph letters should not be shown in small capitals, but instead should be shown in lowercase lettering. For example, in subsection (6)(b)(I)(H), "SUBSECTION (6)(B)(I)(B) OF THIS SECTION" should instead read "SUBSECTION (6)(b)(I)(B) OF THIS SECTION."