

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Carol Hedges and Steve Briggs

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

**DATE:** January 17, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #195, 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #179 to #194. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #179 to #194, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments 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 repeal the constitutional requirement that the income tax have a single rate;
2. To establish a graduated individual income tax that has higher tax rates for individuals with higher incomes for taxable years beginning on or after January 1, 2022, unless the General Assembly establishes a different graduated income tax that increases the individual income tax by less than .5% of Colorado personal income for the calendar year 2020;
3. To allow the state to retain and spend the additional revenue from the graduated income tax notwithstanding any constitutional limits; and
4. To require this additional tax revenue to be used to address the impacts of a growing population and a changing economy.

## **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. The plenary power of the General Assembly is limited by the federal and state constitutions, and a statutory provision cannot compel the General Assembly to enact legislation. In contrast, if the proposed requirement was included in the Colorado Constitution, it would create a duty. For example, Amendment 64 required the General Assembly to enact an excise tax on marijuana prior to January 1, 2017, and the General Assembly did so. Accordingly, section 3 of the proposed initiative does not create a legal duty on the General Assembly. Is that your intent?
3. The following questions and comments relate to whether a graduated income tax would be "described in section 39-22-104 (1.8)(a)" for purposes of determining whether the tax imposed under proposed subsection 39-22-104 (1.8)(b) would apply:

- a. Assuming that the rates are higher for higher tax brackets, could some of the graduated rates be less than 4.63%? Could all of the graduated rates be less than 4.63%?
  - b. Is it your intent that the General Assembly's graduated income tax must create some additional revenue compared to the current tax? If so, is this clear in the proposed initiative?
  - c. Because the revenue generated must be less than .5% of Colorado personal income, if the General Assembly enacted a graduated income tax that was estimated to generate more than that threshold, then would the tax in subsection (1.8)(b) also apply?
  - d. Given that proposed subsections (1.8)(a) and (1.8)(b) both apply for 2022, is it your intent that the amount of income produced from the General Assembly's graduated income tax is an estimate?
  - e. Is it your intent that either the tax specified in subsection (1.8)(a) or (1.8)(b) will apply in 2022?
4. The following questions relate to proposed section 39-22-103 (1.8)(d):
- a. To the extent that you would like this measure to constitute voter approval under TABOR (4)(a) for the graduated income tax enacted by the General Assembly, is it your intent that the amount of the tax increase identified in the ballot title for the proposed initiative should be based on the .5% of Colorado personal income, if that amount is greater than the estimate for the tax increase based on graduated income tax specified in proposed section 39-22-104 (1.8)(b)?
  - b. TABOR (4)(a) requires prior voter approval for a tax rate increase. If the voters approve the proposed initiative, then wouldn't the graduated rates become the status quo for the 2022 income tax year? And if the General Assembly exceeds any of the rates for the various tax brackets in the graduated income tax that it enacts under proposed section 39-22-104 (1.8)(a), does the plain language of TABOR (4)(a) require an additional election for the tax rate increases, regardless of the language in proposed subsection (1.8)(d)?
  - c. Is it your intent that the tax rates enacted by the General Assembly not exceed any of the rates in proposed section 39-22-104 (1.8)(b) to avoid this potential issue?

- d. Could the General Assembly broaden the income tax base and reduce the rate as part of graduated income tax for which the voter approval is granted under proposed subsection (1.8)(d)?
5. The taxes that are enacted under proposed section 39-22-104 (1.8) begin January 1, 2022. Did you intend to refer to "the income tax rate that existed as of December 31, 2019,"?

## **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. In section 4 of the proposed initiative, the citation in the first sentence is written as "pursuant section to sections 39-22-104 (1.8)...". This repetition is unnecessary and should be rewritten as "pursuant to sections 39-22-104 (1.8)...".