

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

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 #184, 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 #183 and #185 to #195. 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 #183 and #185 to #195, 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 increases the tax rate for individuals with higher incomes;
3. To create an alternative minimum income tax for corporations (corporate AMT);
4. To allow the state to retain and spend the additional tax revenue from the graduated income tax and the corporate AMT notwithstanding any constitutional limits; and
5. 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?

All of the questions and comments relate to the corporate AMT in section 4 of the proposed initiative.

2. Does "doing business" have the same meaning as set forth in section 39-22-301, C.R.S.?
3. Does the corporate AMT only apply if a corporation's tax liability under section 39-22-301, C.R.S., is less than \$250?
4. Can the corporate AMT be described as follows: If a corporation's tax liability under section 39-22-301, C.R.S. is less than \$250, then it is subject to the tax imposed under section 39-22-301.1, C.R.S., instead of section 39-22-301, C.R.S.?

5. What language in the proposed initiative indicates that the section would not add tax to a corporation that has more than \$250 of tax liability under section 39-22-301, C.R.S.?
6. If a corporation does business in Colorado but has \$0 of income attributable to Colorado, will the corporate AMT still apply?
7. Does this provision change how affiliated groups file returns under section 39-22-303, C.R.S.?
8. Section 39-22-303.5, C.R.S., establishes rules for a corporation to allocate income to Colorado, and income not allocated here is presumably allocated to another state. Does the corporate AMT have the effect of taxing income that is not allocated to Colorado?
9. If it applies to a corporation that has no or negative income, is it really an income tax?
10. Is the corporate AMT authorized because of the repeal of the phrase "with no added tax or surcharge" in section 2 of the proposed initiative?
11. The corporate AMT is not expressed as a rate. For purposes of subsection (4)(a) of TABOR, is it a "new tax"?
12. Section 5 of the proposed initiative refers to "the revenue generated that would be generated in any calendar year by applying the income tax rates that existed as of December 31, 2019." This seems to imply that the corporate AMT is a rate increase; however, the proposed initiative does not increase the tax rate applied to corporate income. Does your phrasing clearly capture the revenue from the corporate AMT?
13. On December 31, 2019, the state only had one income tax rate—4.63%. Should it be rate or rates in the provision described in the previous question?

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. When adding a subsection that is split into paragraphs, such as subsection (1.8)(a) and (b) in the proposed initiative, it is unnecessary to repeat the (1.8) before the (b).
2. Standard drafting practice is to use the Oxford comma when making a list.
3. In section 5 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)...".