

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: Suzanne Taheri and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: July 2, 2021

SUBJECT: Proposed initiative measure 2021-2022 #41, concerning a sales tax rate reduction

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 purpose of the proposed amendment to the Colorado Revised Statutes appears to be to reduce the state's sales and use tax rate to 2.89 percent.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this the proponents' intent?
3. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state?
4. Have the proponents considered the need for an appropriation to the Department of Revenue for reprogramming and other administrative costs?
5. According to recent forecasts from legislative and executive branch economists, state revenue is expected to exceed the TABOR limit for each of the next two fiscal years. The measure would reduce the amount of the excess, thereby reducing the state obligation for refunds to taxpayers under TABOR. Is this the proponents' intent?
6. Is it the proponents' intent for this to be included on the November 2022 ballot as a tax decrease?
7. If the proposed initiative does not become law until late 2022 or early 2023 upon the Governor's proclamation, does this provide sufficient time for retailers to prepare for the change? Would the proponents consider a later effective date, such as July 1, 2023, to allow for necessary administrative changes?
8. Since the use tax is a complementary or compensating tax to the sales tax and does not apply if the sales tax was charged, is it correct to assume that the proponents' intent is to also reduce the use tax rate?
9. If the major purpose of the proposed amendment to the Colorado Revised Statutes is to reduce the state's sales and use tax rate to 2.89 percent, please consider changing your proposed initiative so it reads as follows:

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-26-105, **amend** (1)(a)(I)(A); and **add** (1)(a)(I)(A.5) as follows:

39-26-105. Vendor liable for tax - definitions - repeal. (1) (a) (I) (A)
 Except as provided in subsections (1)(a)(I)(B), (1.3), and (1.5) of this section, every retailer shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to two and ninety

one-hundredths percent of all sales made on or after January 1, 2001, BUT BEFORE JANUARY 1, 2023, by the retailer of commodities or services as specified in section 39-26-104.

(A.5) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2023, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

SECTION 2. In Colorado Revised Statutes, 39-26-106, **amend** (1)(a) as follows:

39-26-106. Schedule of sales tax. (1) (a) (I) Except as otherwise provided in ~~subparagraph (II) of this paragraph (a)~~ THIS SUBSECTION (1), there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of three percent of the amount of the sale, to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(II) On and after January 1, 2001, BUT BEFORE JANUARY 1, 2023, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of two and ninety one-hundredths percent of the amount of the sale to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(III) ON AND AFTER JANUARY 1, 2023, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

SECTION 3. In Colorado Revised Statutes, 39-26-202, **amend** (1)(a) and (1)(b); and **add** (1)(b.5) as follows:

39-26-202. Authorization of tax. (1) (a) Except as otherwise provided in subsection (1)(b) AND (1)(b.5) of this section, there is imposed and shall be collected from every person in this state a tax or excise at the rate of three percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(b) On and after January 1, 2001, BUT BEFORE JANUARY 1, 2023, there is imposed and shall be collected from every person in this state a tax or excise at the rate of two and ninety one-hundredths percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(b.5) ON AND AFTER JANUARY 1, 2023, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

SECTION 4. In Colorado Revised Statutes, 39-26-112, **amend** (1) as follows:

39-26-112. Excess tax - remittance - repeal. (1) If any vendor, during any reporting period, collects as a tax an amount in excess of three percent of all taxable sales made prior to January 1, 2001, ~~and~~ two and ninety one-hundredths percent of all taxable sales made on or after January 1, 2001, AND TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2023, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor, or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

10. Instead of including the effective date section that reads, "This act takes effect January 1, 2023," the proponents should rely on the proposed amendments to the Colorado Revised Statutes taking effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative. This way the statutory sections can be changed

before January 1, 2023, in order to reflect the new sales tax rate ahead of January 1, 2023.

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 and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to both sections of the proposed initiative and be in bold-face type like so:

39-26-106. Schedule of sales tax. (1) (a) (II) ...

SECTION 2. Effective date. ...

2. In Section 1 of the proposed initiative, the included text of 39-26-106 (1)(a)(II) is missing the "(1)" before the "(a)(II)".