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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: July 18, 2025

Subject: Proposed initiative measure 2025-2026 #119, concerning the repeal of state income tax on tips and overtime compensation

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. To eliminate the requirement that the amount of any overtime compensation excluded or deducted from a taxpayer's federal gross income be added to the taxpayer's federal taxable income for purposes of the state income tax imposed on individuals, estates, and trusts; and

2. To require that the amount of tips and overtime compensation included in a taxpayer's federal taxable income be subtracted from the taxpayer's federal taxable income for purposes of the state income tax imposed on individuals, estates, and trusts.

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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent?
3. Public Law 119-21, also known as the "One Big Beautiful Bill Act," makes certain tips and overtime compensation deductible from federal taxable income for the purpose of determining a taxpayer's federal income tax from 2025 through 2028 (federal deductions). Are the proposed initiative's modifications of the state income tax treatment of tips and overtime compensation (state subtractions) intended to apply for the same income tax years as the federal deductions as set forth in Public Law 119-21, meaning 2025 through 2028? If not, to which income tax years are the state subtractions intended to apply?
 - a. If the state subtractions were made applicable to income tax year 2025 after voter approval of the proposed initiative at the 2026 general election, how would the state subtractions be administered and enforced?
 - b. Article X, section 20 (8)(a) of the Colorado constitution prohibits a new state definition of taxable income from applying before the next year. Have the proponents considered whether and how this prohibition may delay application of the proposed initiative if it becomes law in 2026?
 - c. Do proponents believe that the department of revenue will have sufficient time and resources to make changes to its forms and processing systems to implement the state subtractions for income tax year 2026 or, if the

state subtractions are intended to take effect for income tax year 2025, that income tax year?

4. The following questions concern how the substance of the proposed initiative compares to and is intended to interact with the substance of Public Law 119-21:
 - a. Is the proposed initiative intended to enforce and preserve the tips and overtime compensation exclusions as provided for in new Public Law 119-21 at the state income tax level?
 - b. Is the proposed initiative intended to provide additional state income tax benefits related to tips and overtime compensation income not available in Public Law 119-21? If so, what additional state income tax benefits are intended to be provided?
 - c. Section 39-22-103 (11), C.R.S., provides that an undefined term used in article 22 of title 39, C.R.S., has the same meaning as when used in a comparable context in the internal revenue code. Neither the term “tips” or the term “overtime compensation” is defined in the proposed initiative. Is it the proponents’ intent that both of these terms have the same meanings as when they are used in the internal revenue code as set forth in Public Law 119-21? If not, what are the intended definitions of “tips” and “overtime compensation” for purposes of the state subtractions?
 - d. Public Law 119-21 limits the federal deductions to “qualified tips” and “qualified overtime compensation” as those terms are defined in Public Law 119-21 including by reference to other provisions of federal law such as the Fair Labor Standards Act.
 - i. Is it the proponents’ intent to limit the state subtraction for tips to “qualified tips” as defined in Public Law 119-21? If not, what, if any, qualifications are required for “tips” to be subtracted for purposes of the proposed initiative?
 - ii. Is it the proponents’ intent to limit the state subtraction for overtime compensation to “qualified overtime compensation” as that term is defined by Public Law 119-21? If not what, if any, qualifications are required for “overtime compensation” to be subtracted for purposes of the proposed initiative?
 - e. Specifically concerning the proposed state subtraction for tips:

- i. How will the proper amount of tips subject to the state subtraction be calculated and reported and who will be responsible for these tasks? Will special statements or other forms be required?
 - ii. Is the state subtraction amount for tips subject to the same annual \$25,000 cap as are qualified tips under Public Law 119-21? If not, what is the amount of the annual cap, if any?
 - iii. Is the subtraction for tips intended to be allowed to both employees and independent contractors as under Public Law 119-21? Is the state subtraction for tips intended to be allowed for any other type of taxpayer?
 - iv. Is the subtraction for tips subject to phase out when the taxpayer's income exceeds certain threshold amounts of income (for example, by \$100 of each \$1,000 of modified adjusted gross income of \$300,000 for married couples filing jointly; \$150,000 for other returns) as under Public Law 119-21? If so, what are the threshold amounts for phase-out of the state subtraction for tips, if any?
- f. Specifically concerning the proposed state subtraction for overtime compensation:
 - i. How will the proper amount of overtime compensation subject to the state subtraction be calculated and reported and who will be responsible for these tasks? Will special statements or other forms be required?
 - ii. Is the subtraction amount for overtime compensation subject to the same annual \$12,500 cap for individual taxpayers (\$25,000 in the case of married couples filing jointly) as under Public Law 119-21? If not, what are the amounts of the annual caps, if any?
 - iii. Is the subtraction for overtime compensation subject to phase out when the taxpayer's income exceeds certain threshold amounts of gross income (for example, by \$100 for each \$1,000 of modified adjusted gross income of \$300,000 for married couples filing jointly; \$150,000 for other returns) as under Public Law 119-21? If so, what are the threshold amounts for phase-out of the state subtraction for overtime compensation, if any?

5. What is the meaning of the phrase “included in the taxpayer’s federal taxable income” as it appears in new subsection (4)(ff) of section 39-22-104, C.R.S., for purposes of the proposed initiative?
- a. Does this phrase mean some or all of the amount of tips and overtime excluded or deducted at the federal level pursuant to Public 119-21, resulting in a second subtraction of those amounts at the state level?
 - b. Does this phrase mean “the amount of tips and overtime compensation included in the taxpayer’s federal taxable income” as a result of the limitations in Public Law 119-21 and thus not already excluded or deducted from federal income for federal tax purposes?
 - c. Does this phrase mean “the amount of tips and overtime compensation included” or that could be included in a taxpayer’s federal taxable income after the federal deductions are no longer available under federal law, either in 2028 or at some later date?
 - d. Does this phrase “included in the taxpayers federal taxable income” have any other meaning not mentioned above?

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. For clarity, the word “and” between “tips” and “overtime” should be replaced with “or”.