

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** William McBride and Erik Phariss

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

**Date:** July 3, 2025

**Subject:** Proposed initiative measure 2025-26 #100, concerning state income tax repeal

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

## **Purposes**

### **Purposes for Proposed Initiative 2025-2026 #100**

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To reduce state income tax on individuals, estates, and trusts beginning with the 2027 state income tax year; and
2. To prohibit the state from imposing an income tax on individuals, estates, and trusts in state income tax years beginning on or after January 1, 2031.

## **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? If not, the designated representatives should include a desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. By referring to income tax imposed upon “individuals, estates, or trusts,” and stating that “[t]he general assembly may levy income taxes on entities other than individuals, estates, or trusts,” is it the proponents’ intent to continue to allow the state to impose a corporate income tax without imposing any new limitations on the imposition of such a tax?
4. As currently written, proposed article X section 17 (1) of the Colorado Constitution appears to prevent the state from collecting income tax revenue derived from the income of individuals, trusts, or estates after January 1, 2031, earned before January 1, 2031. Is this the proponents’ intent? If not, what

effect does the phrase “or collect” add that is not already achieved by the prohibition on imposition of an income tax on income of individuals, trusts, and estates?

5. The income tax year for individuals, estates, and trusts normally aligns with the calendar year so that it begins on January 1. However, proposed section 39-22-104 (1.7)(h) prohibits the state from imposing or collecting individual, estate, and trust income only “after” January 1, 2031, which means beginning January 2, 2031. If the proponents’ intent is that the prohibition should begin on January 1, 2031, “after” should be changed to “on and after.”
6. Proposed article X, section 17 (1) of the Colorado Constitution states that “[t]he state of Colorado shall not impose or collect” certain state income taxes and proposed article X, section 17 (3) of the Colorado Constitution states “[t]he General Assembly may levy” certain state income taxes. Why is the phrase “impose or collect” used in one section and “levy” in the other? Why is the “state of Colorado” referred to in one section and the “General Assembly” in the other?
7. Proposed article X, section 17 (2) of the Colorado Constitution states that “[s]tate income taxes on individuals, trusts, and estates shall be reduced.” Is it the proponents’ intent to require this reduction to be achieved by a reduction to the state income tax rate or could it be achieved by other means such as? new or increased income tax credits, standard exemptions, or deductions? Is a reduction of at least the specified minimum percentage required for all individuals, estates, and trusts or can the minimum percentage reduction requirement be met on a statewide basis based on the total amount of state income tax imposed on individuals, estates, and trusts?
8. Proposed article X, section 17 (2) of the Colorado Constitution states that “beginning with tax years commencing on or after January 1, 2027,” certain state income taxes shall annually be “reduced by a minimum of one percent.” Is it the proponents’ intent that certain state income taxes be reduced by “one percent” (e.g. from 3% to 2.97%) or by “one percentage point” (e.g. from 3% to 2%)? If the proponents’ intent is to require the rate to be reduced by one percentage point annually beginning January 1, 2027, then proposed section 39-22-104 (1.7)(d), C.R.S., which reduced the income tax rate for those income taxes by only four tenths of one percentage point, appears to be unconstitutional because it does not reduce the rate sufficiently to comply with proposed article X, section 17 (2).

9. Is proposed article X, section 17 (3) of the Colorado Constitution meant to grant new powers to the state? In particular, how does this proposed section interact with article X, section 20 of the Colorado Constitution? For instance, article X, section 20 (8) states that “[a]ny income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate”, which appears to be incongruous with the language in proposed article X section 17 (3) granting the General Assembly the right to levy “either graduated or proportional” income tax.
10. With respect to proposed article X, section 17 (3) of the Colorado Constitution, what does it mean for the General Assembly to “[i]n the administration of an income tax law, provide for special classified or limited taxation or the exemption of tangible and intangible personal property?” How is this provision necessarily and properly connected to the single subject of the proposed initiative?
11. How, if at all, does proposed article X section 17 of the Colorado Constitution interact with a local government’s ability to impose, collect, or levy an occupational privilege tax or other similar tax?
12. How does section 39-22-627 which requires income tax rate reductions to be used to refund excess state revenues in specified circumstances, interact with proposed sections 39-22-104 (1.7)(d) through (1.7)(h)?
13. Section 3 of the proposed initiative repeals all of part 1 of article 22 of title 39, C.R.S. What is the proponents’ intent in repealing this part? Various elements of that part, such as definitions, are referred to elsewhere in statute.
14. What is the purpose of section 4 of the proposed initiative?
15. Do the proponents intend to amend the proposed initiative to specify “the public services or programs that are to be reduced by the tax change” for purposes of section 1-40-106 (3)(e)? If so, what public services or programs do the proponents intend to reduce by the tax change?
16. Although the proposed initiative lowers the individual state income tax rates, it does not lower the state alternative minimum tax rate. Have the proponents considered making corresponding adjustments to the state alternative minimum tax rate and the credit that may be applied to a taxpayer's alternative minimum tax liability?

17. How do the proponents intend for refundable income tax credits for individuals, estates, or trusts to work after the state income tax is no longer imposed?

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. It is standard drafting practice to only capitalize proper nouns, such as "Colorado." It is unnecessary to capitalize "state" or "part" in the proposed initiative.
2. When referencing the paragraph of a subsection, it is standard drafting practice to include the subsection number as well. For example, in the amending clause of section 2 of the proposed initiative, "(1.7)(d),(e),(f),(g), and (h)" should instead read "(1.7)(d), (1.7)(e), (1.7)(f), (1.7)(g), and (1.7)(h)."
3. It is standard drafting practice to capitalize only the first word of a headnote (the **bold** language after a constitutional or statutory section number that briefly describes the content of the section). The capitalization should therefore be removed from "**Tax Sunset**" in the headnote for proposed article X, section 17 of the Colorado Constitution and "**Date**" in the headnote for section 4 of the proposed initiative if that headnote is not changed in response to the next comment.
4. Section 4 of the proposed initiative appears to be an applicability clause rather than an effective date clause. Accordingly, consider changing "**Effective Date**" to "**Applicability**".