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MEMORANDUM

February 15, 2011

TO: Carol Hedges and Marijo Rymer

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #16, concerning a fair income tax system

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 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 2011-2012 #13 to #18. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2011-2012 #13 to #15, #17, and #18, 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 appear to be:

1. To repeal the section in section 20 (8) (a) of article X of the state constitution that specifies that all taxable net income shall be taxed at one rate;
2. On and after January 1, 2012, to impose a graduated state income tax on federal taxable income on individuals, estates, and trusts as specified in a schedule of rates;
3. To require the adjustment of the income brackets in the specified schedule of rates each income tax year by the percentage change in Colorado personal income;
4. On and after January 1, 2012, to raise the flat rate tax on each domestic and foreign C corporation to seven percent of Colorado net income;
5. On and after January 1, 2012, to impose a Colorado alternative minimum tax on every domestic or foreign C corporation;
6. To specify that revenues raised by the income tax imposed by the proposed initiative constitute a voter-approved revenue change and may be collected, kept, and spent without regard to other limits in the constitution or other law and to specify the manner in which such revenue may be spent;
7. To specify that revenues raised by the income tax imposed by the proposed initiative be spent only for paying the costs of education, higher education, health care, and public safety;
8. To specify that at least 90% of the revenues raised by the taxes imposed as a result of the proposed initiative be spent on services for Colorado residents and not administrative costs;
9. To require the general assembly to establish a citizen's oversight committee to assure that such revenues are spent in accordance with the constitution; and
10. To require the director of research of the legislative council to prepare an annual report concerning the amount of revenue raised and spent as a result of the proposed initiative.

Technical Comments:

The technical comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #13, 2011-2012 #14, and 2011-2012 #15 are applicable to proposed initiative 2011-2012 #16 and, as such, will not be repeated. However, the following new technical comments and questions have arisen in 2011-2012 #16. 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 the proposed initiative, the amending clause for section 6 should read: "Part 3 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:"

Substantive Comments and Questions

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #13, 2011-2012 #14, and 2011-2012 #15 are applicable to proposed initiative 2011-2012 #16 and, as such, will not be repeated. However, the following new substantive comments and questions have arisen:

1. The following questions are related to the new statutory section for the corporate alternative minimum tax:
 - a. Generally an alternative minimum tax (AMT) provides an alternative set of rules for calculating income tax due. These alternative rules then determine the minimum amount of tax that should be paid on income. If the tax paid is at least that much under the "regular" income tax, there should be no AMT liability. But if the regular tax paid falls below the minimum, the taxpayer must make up the difference by paying alternative minimum tax. It is not clear under what circumstances a C corporation would be liable for the alternative minimum tax under this proposed initiative.
 - b. Please explain what "a tax is imposed in an amount equal to the excess of \$1,000 over the tax imposed in section 39-22-301." means. Is the reference to section 39-22-301 a reference to the new seven percent flat tax rate? What is the additional tax?
 - c. In subsection (2) you make reference to "the modifications provided in section 39-22-301". What modifications are you referring to?
 - d. What do you mean by "except that any state or local bond interest included in the federal alternative minimum taxable income shall not be added back in determining the Colorado alternative minimum taxable income"?
 - e. What do you mean by "and any interest income from obligations of the state of Colorado or any political subdivision thereof which is exempt from the Colorado tax imposed pursuant to the provisions of section 39-22-304 (2) (b) shall be subtracted from the federal alternative minimum taxable income to the extent included therein in determining Colorado alternative minimum taxable income."?