

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Jon Caldera

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

**Date:** March 31, 2026

**Subject:** Proposed initiative measure 20025-2026 #314, concerning an income tax rate reduction and tax break evaluation committee.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff 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

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

1. To reduce the state income tax rate for individuals, estates, trusts, and corporations from 4.40% of federal taxable income to 3.70% of federal taxable income;
2. To establish a “tax breaks evaluation committee” that will evaluate all tax breaks in the state by examining the initial purpose of the tax break, whether the tax break is accomplishing its purpose, the tax break’s economic impact, and whether any tax breaks duplicate another tax break, and make recommendations to the General Assembly; and
3. To require that the General Assembly enact legislation necessary to assure that the income tax rate reduction provided for in the measure is “revenue neutral” .

## **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, you should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

3. In subsection (d) of section 1 of the proposed initiative, the General Assembly “is directed to conduct an in depth evaluation of all existing tax breaks”. This directive appears in the legislative declaration, which states that “the people of the state of Colorado find and declare that”. Directing the General Assembly to conduct a study is not a finding or declaration – it is a directive that is more appropriate in the actual statutory language.
  - a. Would the proponents consider placing the directive elsewhere in the actual statutory language?

- b. Starting at question #10, this memorandum discusses a “tax break evaluation committee” created in section 5 of the proposed initiative. As provided by section 5, the tax break committee would consist of legislators appointed by legislators and an unaffiliated voter appointed by the Colorado state auditor. However, subsection (d) of section 1 of the proposed initiative provides that the “general assembly” is directed to conduct the evaluation.
  - i. Why is the General Assembly directed to conduct the evaluation in the portion of the proposed initiative normally reserved for factual findings and recitals?
  - ii. Why is the General Assembly so directed when section 5 of the proposed initiative requires the tax breaks committee to consist of five people, one of whom is not a legislator?
- 4. The following comments and questions concern section 2 of the proposed initiative:
  - a. Section 39-22-104 (1.7)(a) of the proposed initiative appears to reflect the existing statutory text, except “but before January 1, 2020,” is in small capital letters. Small capital letters indicate new statutory language. However, the current relevant language in this subsection also provides “but before January 1, 2020,”.
  - b. Why does “but before January 1, 2020” appear in small capital letters in this subsection?
    - i. Is the intent to change the date currently in statute from January 1, 2020, to some other date?
    - ii. If the intent is to keep the January 1, 2020, date currently in section 39-22-104 (1.7)(a), why does this subsection appear in the initiative?
  - c. Section 39-22-104 (1.7)(b) of the proposed initiative is in small capital letters, which indicates that the subsection is intended to be new statutory language. However, the subsection is already in statute with different language than that in the proposed initiative.
    - i. Is the intent to replace existing section 39-22-104 (1.7)(b) with the proposed initiative’s language for this subsection? If so, what is the

income tax rate for income tax years commencing on or after January 1, 2021, but before January 1, 2027?

- ii. Is the intent to create a new subsection? What would the new subsection be?
  - d. Section 39-22-104 (1.7)(c), states that “with respect to taxable years commencing on or after January 1, 2022, a tax of four and forty one-hundredths percent is imposed on federal taxable income ...” and this rate continues indefinitely. However, section 39-22-104(1.7)(b) in the proposed initiative would reduce the income tax rate imposed on federal taxable income of individuals, estates, and trusts to 3.70% on or after January 1, 2027. Have the proponents considered resolving this conflict between section 39-22-104 (1.7)(b) of the proposed initiative and the existing section 39-22-104 (1.7)(c)?
5. The following comments and questions concern section 3 of the proposed initiative:
- a. Section 39-22-301(1)(d)(I)(I) appears to reflect existing law, except “but before January 1, 2027,” is in small capital letters. However, section 39-22-301 (1)(d)(I)(I) has been repealed. What is the proponents’ intent in including this subsection in the proposed initiative?
  - b. Section 39-22-301(1)(d)(I)(I) provides that for income tax years commencing on or after January 1, 2000, but before January 1, 2027, the corporate income tax rate is 4.63%. The current corporate income tax rate is 4.40%. What is the proponent’s intent with regard to changing the corporate income tax rate from 4.40% to 4.63% for income tax years beginning before January 1, 2027?
  - c. Section 39-22-301 (1)(d)(I)(I) of the proposed initiative appears to reflect all new text because the subsection is entirely in small capital letters. However, section 39-22-301 (1)(d)(I)(I) exists in the Colorado Revised Statutes.
    - i. Do the proponents intend to repeal the current section 39-22-301 (1)(d)(I)(I) and replace it with the language in the proposed initiative?

- ii. If the proponents do not intend to repeal section 39-22-301 (1)(d)(I)(J), where do the proponents intend that the new language will be located in the Colorado Revised Statutes?
  - d. Section 39-22-301 (1)(d)(I)(K), C.R.S., currently imposes an income tax of 4.40% on a corporation's Colorado net income beginning with the income tax year commencing on or after January 1, 2022. However, section 39-22-301 (1)(d)(I)(J) in the proposed initiative would reduce the income tax rate imposed on Colorado net income of corporations to 3.70% "on or after January 1, 2020".
    - i. Have the proponents considered resolving this potential conflict ?
    - ii. Is the intent that by starting on January 1, 2020, the corporate income tax rate is retroactively changed to 3.70% as of that date?
- 6. Section 4 of the proposed initiative would amend sections 39-22-604 (18)(a) and (b), C.R.S., to provide that withholding tax is to be calculated at the rate set forth in sections 39-22-104 or 39-22-301, C.R.S. However, the current 39-22-604 (18)(a) and (b) already reflect the proposed initiative's language. What is the proponents' intent with respect to section 4 of the proposed initiative?
- 7. The following comments and questions relate to section 5 of the proposed initiative:
  - a. Section 39-22-5702 (3) of the proposed initiative provides that the committee will make recommendations to the General Assembly regarding the evaluation of tax breaks in Colorado law. Subsection (3) also provides that the General Assembly "shall then enact such necessary legislation to assure that adoption of the tax reduction measure is at least revenue neutral." Must the General Assembly enact laws implementing all of the committee's recommendations?
  - b. Proposed section 39-22-5702 (3) directs the General Assembly to enact legislation to ensure revenue neutrality with the enactment of the "tax reduction measure". Does "tax reduction measure" mean the income tax rate cut proposed in sections 2 and 3 of the proposed initiative?
  - c. What does "at least revenue neutral" mean with respect to the income tax rate cut and the recommendations of the committee?

- d. Is the only way that the General Assembly can make “the tax reduction measure” “at least revenue neutral” by enacting legislation that implements some or all of the “tax breaks evaluation committee’s” recommendations?
  - e. Proposed section 39-22-5702 commands the General Assembly to enact necessary legislation to achieve revenue neutrality. Since this is a statutory command, could the General Assembly modify or ignore it?
  - f. Proposed section 39-22-5702 (1) of the initiative states that the “tax breaks evaluation committee” is responsible for reviewing all of the state’s “tax breaks”.
    - i. What is a “tax break”?
    - ii. How will the committee determine if a “tax break” is accomplishing its “purpose”?
    - iii. What is the meaning of “economic impact” of the tax break?
    - iv. What does it mean to “duplicate another tax break”?
    - v. What is the scope of “all other relevant considerations”? What is the limiting factor, if any, on what the committee must take into consideration when evaluating a tax break?
    - vi. Who is responsible for measuring the financial impact to the state’s budget from the income tax rate reduction?
  - g. Article X, section 20 of the Colorado constitution provides that a tax policy change directly causing a net tax revenue gain to a district must be put to a vote of the people. Are the changes proposed by the tax breaks evaluation committee considered “tax policy changes” that should be approved by the people?
8. The Colorado state auditor annually evaluates the state’s “tax expenditures” to determine whether they are fulfilling their purpose, the costs to the state, and the estimated benefits to the state, and makes recommendations to the legislature about which tax expenditures should be modified, repealed, or extended. How is the function of the committee different from the function of the Colorado state auditor?

9. The proposed initiative is effective on the proclamation of the governor, which usually occurs in mid-December. The committee will have from that date until March 31, 2027 to evaluate every state “tax break” which is about three and one-half months. On April 10, 2027, ten days later, the committee will make its recommendations to the General Assembly. Is this enough time for the “tax break evaluation committee” and General Assembly to complete the process outlined in section 39-22-5702?

## **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 meeting only if the designated representatives 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 follows:

1. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. This structure should be followed to ensure consistency in the structure of the statutes. For example, “(1)” should precede the introductory portion of the legislative declaration.
2. It is standard drafting practice to set off nonessential phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas. For example, in section 1 (b), a comma should follow the phrase “At the same time.”
3. It is standard drafting practice to use the phrase “this act” rather than “this initiated statute.”
4. It is not necessary to initial-capitalize “house of representatives,” “senate,” “speaker of the house of representatives,” “president of the senate,” “minority leader,” “state,” or “state auditor.”
5. There appears to be an errant bracket in proposed C.R.S. section 39-22-5701 (1)(a).