

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Brian Watson and John Brackney  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** October 8, 2019  
**SUBJECT:** Proposed initiative measure 2019-2020 #128, concerning Tax Deduction for Limited Vehicle Usage

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 create a tax deduction from Colorado gross income for driving a primary motor vehicle less than 15,000 miles per calendar year;

## **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. The proposed initiative begins with a declaration in small capitals. Is the declaration intended to be statutory or nonstatutory? If the declaration is intended to be statutory, meaning it would be published in the statutes, please include an amending clause indicating where in the statutes it would be included. If the declaration is intended to be nonstatutory, standard drafting practice is to use regular case, not small capitals.
3. Section 39-22-542 already exists in statute. Is it the proponents' intent to add this language to that section? If not, please change the amending clause and new section headnote to reflect a new section 39-22-543.
4. Section 39-22-542 (1)(a) of the proposed initiative says that the deduction "shall be allowed to any person." What does the word "person" mean? Does it include corporations, partnerships, limited liability companies, associations, and other legal entities in addition to natural persons, as it is defined in section 2-4-401 (8), C.R.S.? Or is the proponents' intent that the deduction is available only to individuals?
5. The proposed initiative describes "a deduction from Colorado gross income." What is the definition of "Colorado gross income" and how is it calculated?
6. With regard to making the deduction available to individuals, is there a reason to not structure it like the deductions in section 39-22-104 (4), C.R.S., which are subtracted from federal taxable income before applying the Colorado tax rate for individual income in accordance with section 39-22-104 (2), C.R.S.?
7. The proposed initiative says the deduction is allowed to any "person who operates their primary motor vehicle less than" a certain number of miles.
  - a. Does the word "their" mean that the person taking the deduction must be the Colorado resident on the title, as described in the initiative's definition of "primary motor vehicle"? Or can a taxpayer claim the credit for a car titled to any resident, if the taxpayer drives that vehicle for more miles than any other?

- b. Does the answer change depending on whether the taxpayer and the resident on the title are in the same household, are related to each other, or file a joint return?
- 8. If the proponents' intent is that the person claiming the deduction must be the resident on the title, how does the deduction work if a vehicle is titled to more than one person?
  - a. Does "any person who operates their primary motor vehicle" mean that each person on the title can drive the vehicle up to 10,000 or 15,000 miles and claim the corresponding credit?
  - b. If the amount is based on the total miles driven in the year on the vehicle, can both of the people on the title claim the deduction if the total mileage on the vehicle is under the requirement for the year?
  - c. Do the answers change depending on whether the taxpayers share a household, are related to each other, or file a joint return?
- 9. If two individuals file a joint return, how does the deduction work?
  - a. If they each have their own primary motor vehicle, can they each claim the deduction if they each drove less than the required number of miles in their vehicle?
  - b. If they only have one vehicle between them, but they drove it less than the required number of miles, can they still each claim the deduction? Are they allowed to drive the shared vehicle 10,000 or 15,000 miles each, or in total?
  - c. Do the answers depend on how the vehicles at issue are titled?
- 10. How would part-year ownership be treated?
  - a. If a person did not own a vehicle, but then acquired one (for example, in December), could they claim the deduction during that tax year so long as they drove less than required number of miles during that partial year?
  - b. If a person changed vehicles (for example, traded in a vehicle or changed leases), and drove each vehicle for less than the required number of miles, could the person claim the deduction on both vehicles, even if their total miles driven were greater than 15,000?

- c. If one person sold a car to another during a single tax year, and neither drove it more than 15,000 miles during that year, could both of them claim the deduction?
- 11. If the deduction is available to corporations and other entities that may be taxpayers, how is the mileage calculated on a vehicle titled to that entity?
- 12. The proposed initiative defines "primary motor vehicle" as the motor vehicle titled to a resident "that is also the vehicle driven the most miles in [the] tax year for which a deduction" is claimed. How is this determined?
  - a. Does it mean the vehicle driven the most by the resident compared to all vehicles titled to that resident? Or compared to all vehicles the resident may drive, including vehicles titled to other individuals?
  - b. Would the determination vary depending on whether the vehicles at issue are titled to more than one person or on the relationship between individuals?
  - c. If a person drives their primary vehicle 9,000 miles in a year but also drives several other vehicles for less than that amount each, would the person still qualify for the deduction?
  - d. Is there a distinction between miles driven on Colorado's roads and miles driven off-road or in other states or do all miles driven by a person count towards the allowable millage each year?
- 13. What is the definition of "motor vehicle"? Since the definition in the initiative refers to a vehicle registered in accordance with section 42-3-102, C.R.S., is it the proponents' intent that the definition of "motor vehicle" in section 42-1-102 (58), C.R.S., would apply? If so, would the proponents consider making that explicit with a cross reference? If not, would the proponents consider adding a definition of the term?
- 14. What is the definition of "Colorado resident" as it is used in the definition of "primary motor vehicle"?
  - a. Is the term intended to refer back to the "person" who is allowed to take the tax deduction?
  - b. Does the term include domestic corporations, partnerships, limited liability companies, associations, and other domestic legal entities? Or is it intended to refer to the definition of "resident individual" in section 39-22-103 (8), or to have a different definition?

- c. If a person resides in Colorado for part of a year, how are the mileage requirements and deduction amounts calculated?
- 15. How would the requirements for claiming the credit be verified or enforced? For example, how would the mileage be tracked? How would the taxpayer prove or the department of revenue confirm what the mileage on a vehicle was on the first and last day of the tax year and, if necessary, which person drove how many miles on the vehicle in the course of the year?
- 16. The initiative specifies that the sections take effect and apply to tax years beginning January 1, 2021. Does this allow sufficient time after the 2020 election for the department to promulgate rules related to the credit and to educate taxpayers on how to document or track their mileage for that tax year?
- 17. Given the growth of ride sharing and other vehicle sharing arrangements that might affect how people drive and own vehicles, would it make sense to include a repeal after a certain number of years?
- 18. In the event self-driving motor vehicles become available, would any time spent in such a vehicle constitute operation of the vehicle or only time actively operating the controls of the vehicle?
- 19. The proposed initiative states that the executive director of the department of revenue "shall have the power to promulgate rules." The word "shall" is defined in section 2-4-401 (13.7), C.R.S., to mean that a person has a duty. Is the proponents' intent to require the executive director to promulgate rules, or to say that the executive director "may promulgate rules"?
- 20. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
  - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be

submitted to the legislative council staff at  
[BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## 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 purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
2. The following is the standard drafting language used for creating a definition: "As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means (the definition for the term)..."
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
  - a. The first letter of the first word of each sentence;
  - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.
4. It is standard drafting practice to only capitalize proper nouns. For example, "the State," "Section," "Primary Motor Vehicle," "Executive Director," and "Department of Revenue" should not be capitalized.
5. When designating the power to promulgate rules, it is standard drafting practice to include "**- rules**" in the headnote of the statutory section.