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A ballot initiative would replace the flat tax with high graduated rates.

Colorado Progressives Hike the Tax Slope

Progressives are on a state-hopping campaign to raise taxes on high earners. Their next target is Colorado, where they submitted signatures on Monday for a ballot initiative in November that would replace the state's flat tax with a steeply progressive income tax. Is the goal to depopulate Aspen?

Colorado's relatively low 4.4% flat income tax has been a major draw for businesses and young professionals. It's one reason the state's population has surged over the last couple of decades. But now progressives want to make Colorado more like California and the high-tax states that many of its inhabitants left.

The proposed ballot Initiative 195 would replace the flat 4.4% rate with six income brackets ranging from 3.7% (for individuals earning up to $25,000) to 8.4% (above $1 million). Proponents say Coloradans earning less than $500,000 wouldn't pay more in tax since the top rate for individuals making less than $500,000 would remain 4.4%.

But they skip over that the brackets wouldn't be adjusted annually for inflation. More people would rise into higher brackets and pay more in tax as their incomes grow. Because small businesses typically pay tax at individual rates on pass-through income, many would see sharp increases. A family farm that has a good year would be punished with a higher tax bill.

Under I-195, Colorado's top rate would rank by far the highest in its neighborhood, which includes Wyoming (no income tax), Arizona (2.5%), Utah (4.45%), Oklahoma (4.5%), Nebraska (4.55%), Kansas (5.58%) and New Mexico (5.9%). Colorado's slopes may offer worldclass skiing, but you don't have to pay state taxes to enjoy the powder.

Additional revenue raised by the progressive tax would also be exempt from Colorado's constitutional limit on tax revenue growth, which is pegged to the rate of population growth plus inflation. This has been a crucial restraint on political spending appetites. Under I-195, the Democrats who control the statehouse would enjoy a bigger spending allowance. Revenue could also become more volatile since incomes of high earners wax and wane with capital gains.

Colorado like most states is seeing healthy revenue growth thanks to strong capital gains, but progressives are still seeking to soak the rich. Democrats this year have imposed millionaire taxes in Washington (9.9%), Rhode Island (8.99%) and Maine (9.15%). If there's an economic downturn, look for progressives to seek even higher rates.

Progressives in Colorado and these other states say the graduated tax is needed to compensate for federal Medicaid cuts in last year's GOP tax bill. But the Congressional Budget Office projected last month that federal Medicaid spending will increase 34% over the next decade notwithstanding the modest GOP reforms.

The truth is progressives want more money to redistribute on expanding entitlement programs and to reward their union allies. Yet history shows that once a progressive tax system is in place, spending keeps rising as revenue does and rates follow.

Democratic Gov. Jared Polis, who can't run for re-election this year, has said a graduated income tax would be "absolutely devastating" to Colorado's economy. He's right. But it would be great for Utah's economy.

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Tiered or capped?

Battle over Colorado's income taxes may come down to most votes

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The battle between two competing ballot measures — one seeking to cap Colorado's income tax rate, the other pushing for a tiered system depending on income levels — might come down to whichever ballot proposal gets one more vote.

The organizations behind the two proposals have both turned in signatures to the state election office, which will determine whether they have submitted a sufficient number to make it to the November ballot.

Initiative No. 195 would set up a six-tier structure for state income taxes. Those who earn between $100,000 and $500,000 annually would see no increase in their taxes, while those making under $100,000 annually would see a small decrease.

For taxpayers who earn at least $500,000, their tax liabilities would jump. And those who get $1 million or more would see their tax rate nearly double.

Meanwhile, Initiative No. 232 would cap Colorado's individual and corporate income tax rate at 4.4%. That rate has been in place since 2022.

To appear on the ballot this November, the measures must each submit about 124,000 valid signatures. Advance Colorado, which is behind Initiative No. 232, said it submitted 190,000 signatures to the Secretary of State's Office. Bell Policy Center, which is pushing Initiative No. 195, submitted 157,000.

The measures' tax changes would apply to both individual and corporate income taxes.

Initiative No. 195 measure contains one line that changes Article 20 of the state constitution, known as the Taxpayer's Bill of Rights (TABOR) amendment:

New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

The strike-through portion is language that the ballot measure will remove from the state constitution.

Ballot measures that change the state constitution must be approved by 55% of voters. In addition, they must also obtain signatures from 2% of registered voters in each of the state's 35 senate districts.

Initiative No. 195 contains both a constitutional section and statutory provisions. The second part of the measure is statutory and contains the tiered income tax rates.

However, the state's title board, which determines whether a ballot measure meets the constitutional rule that it contain only a single subject, concluded back in January that, while it changes the state constitution, it would not need approval from 55% of voters. However, it would need signatures from 2% of registered voters in Colorado's 35 Senate districts. Note

The competing measure, Initiative No. 232, backed by Advance Colorado, would cap the tax rate to the current flat rate of 4.4%. The change is purely statutory.

So, if both pass, which one becomes law?

It's the one with the most votes — even when one of them changes the state constitution.

Mario Nicolais, an attorney who specializes in election law, pointed out that most of No. 195 is statutory. The part that changes the state constitution only repeals a portion of Article 20 and doesn't add language to the state constitution. That's also the view of the title board.

Therefore, the measure with the most votes is the one that will become law, he said.

Chris deGruy Kennedy, who heads the Bell Policy Center and is listed as one of two proponents for No. 195, weighed in on what happens if both measures pass — meaning each receives more than 50% of the vote.

"The precedent in the process is reasonably clear and then there's a little bit that will be left up to judicial discretion later in the year," deGruy Kennedy told Colorado Politics on Wednesday.

The first step after the election, if both measures pass, is an analysis by the state Supreme Court. He said the court will look at which components of the ballot measure do not conflict with each other and can go into effect.

That will apply to his proposal, since the competing ballot measure has no constitutional impact.

One result of that, according to deGruy Kennedy, is that a future Colorado General Assembly would have the ability to refer tax measures to the ballot without needing a two-thirds vote of lawmakers.

After that, the court will look at the conflicts between the two ballot measures, he said.

That's where it gets interesting and it goes back to the challenges to Initiative No. 195 that went to the state Supreme Court earlier this year.

Because the court decided that it met the single-subject requirement, it also means that its tax increase and tax cuts provisions are not severable. He said if the court decided in favor of Initiative No. 232, none of the changes in Initiative No. 195 would go into effect — not the tax hikes nor the tax cuts. Note

He added that his coalition would be "bummed" if the tax rates contained in No. 195 don'tt go into effect.

Michael Fields of Advance Colorado, meanwhile, believes that if both passes but his proposal gets more votes and therefore becomes the controlling law, the state's income tax rate would be capped at 4.4% — and at the same time Initiative No. 195's tax cuts for the lower brackets would take effect.

That would mean a loss of state revenue.

He told Colorado Politics that, if both pass, the competing measure's increased rates above 4.4% would not happen but that the lower rates would go into effect, since there's no conflict between the two initiatives on this specific issue.

"It isn't all or nothing," he said.

In an opinion piece for the Colorado Springs Gazette this week, Fields said he agrees that the measure with the most votes above 50% will prevail where there is conflict.

But he believes there will be other impacts due to the change in the constitutional language in Article 20.

State tax breaks on Social Security, pensions and military retirement payments could be ended, he said.

"By choosing to place these exact words in their measure: '... require all taxable net income to be taxed ...' and erasing what is currently in the Constitution: 'at one rate,' the drafters changed the requirements. Now, instead of a requirement for government to tax at one rate, there is, more dangerously, an ultimate requirement for government to tax."

DeGruy Kennedy disputes the interpretation that older residents and military veterans would pay more if the graduated tax proposal passes.

"It says ' to be taxed with no added surcharge.' You can't just leave out part of the sentence," deGruy Kennedy said on X, where and Fields have been debating the two measures' merits over the last several days.

"Keeping taxes low for small businesses, seniors, and veterans does work," Fields had insisted on X. "Your measure would raise them on all three."

As for the requirement for Senate district signatures, the Bell Policy Center said the Protect Colorado's Future Coalition leaders are confident their petition effort met both requirements — the number of verified signatures it will need and the number of signatures from state Senate districts.

"That's because (the coalition) had a robust back-end verification process to not only ensure that we were turning in more than enough valid signatures, but that they met geographic requirements as well," said Alicia Caldwell of the Bell in a statement.

All ballot measure petition signature verifications must be completed by Sept. 2.