

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE  
FOR INITIATIVE 2023-2024 #22  
("TEMPORARY SALES TAX REDUCTION")**

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Initiative Proponents;  
Suzanne Taheri & Steven Ward

Objector:  
Mark Grueskin

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**MOTION FOR REHEARING**

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On April 5, 2023, the Title Board set the following title for Initiative #22:

*Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated \$17.7 million in tax revenue, by a change to the Colorado Revised Statutes that temporarily reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from July 1, 2024, through June 30, 2025?*

The undersigned, a registered voter of the City and County of Denver, objects to titles set by the Board as set forth below.

**I. The title set by the Board violates the clear title requirement for initiative titles.**

The titles are incomplete or misleading in the following ways:

- (a) The titles inaccurately describe the timeframe of the measure's sales and use tax rate reduction. The title states that the reduction applies from "July 1, 2024, through June 30, 2025." Under Sections 2 and 3 of the measure, however, the sales tax reduction applies "[o]n and after July 1, 2024, but *before* June 30, 2025." See Initiative 2023-2024 #22, secs. 2 and 3, proposed C.R.S. §§ 39-26-106(1)(a)(III) and 39-26-202(1)(b.5) (emphasis added). "Before" June 30 is June 29, not June 30. See *Burton v. Stevedoring Servs. of Am.*, 196 F.3d 1070, 1074 (9th Cir. 1999) ("We do not see how 'before' in this context can mean anything but previous to in time, or earlier, or preceding in time, or any other locution one could use to say that something must happen prior to a certain date. It can hardly be taken to mean, 'on the mentioned date.'"). This reading is confirmed by the vendor liability section, which provides that "every retailer shall . . . be liable and responsible for the payment of an amount equivalent to two and eighty-nine one-hundredths percent of all sales made *between* July 1, 2024, and June 30, 2025." Initiative 2023-2024 #22, sec. 1, proposed C.R.S. § 39-26-105(1)(a)(I)(A.5) (emphasis added). "Between" means "[i]ntermediate, when used in designating time, implying the exclusion

of both first and last terminal days.” Ballantine’s Law Dictionary (defining “between”). June 30 is, in other words, “excluded.”

In the same manner, the sales and use tax rate does not reset until “after June 30, 2025,” which means on July 1, 2025. There is, therefore, no sales or use tax on June 30, 2025—the temporary rate reduction ends on June 29 and the rate does not reset until July 1. The title does not describe this feature of the measure and is, therefore, misleading and incomplete.

- (b) The titles fail to inform voters that vendors are not liable for sales tax collected on July 1, 2024, as the measure excludes that date as described above.
- (c) The title does not accurately describe that, on June 30, 2025, if a retailer collects a sales and use tax (which is not authorized on those dates), the retailer may retain the tax collected up to 2.9%. The measure states:

IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF . . . TWO AND NINETY ONE-HUNDREDTHS PERCENT ***ON OR*** AFTER JUNE 30, 2025, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS.

*See Initiative 2023-2024 #22, sec 4, proposed C.R.S. § 39-26-112(1) (emphasis added).* Because no sales or use tax is “imposed” on June 30, 2025, under the measure, this provision does not require the vendor to remit the sales tax and instead, only remit an excess of 2.9% that is collected. The title does not describe this feature of the measure.

- (d) The inclusion of “temporary” in the title is redundant, misleading, and an impermissible catchphrase by the Board on the measure.
  - a. Redundant: the title includes the specific date range for the sales and use tax rate reduction. Inclusion of the word temporary is, therefore, redundant.
  - b. Misleading: the inclusion of the word temporary is misleading because voters may read only that portion of the title and would not, therefore, understand the timeframe of the sales and use tax rate reduction they are approving. Further, the word “temporary” is vague whereas as the measure includes a timeframe.
  - c. Catchphrase: The inclusion of “temporary” is improper because the word “work[s] in favor of [the] proposal without contributing to voter understanding.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 26. “Temporary” is a non-specific term that is overly inclusive of the definite period to be covered by this measure. The word thus “mask[s] the policy question” presented by the initiative, and it could easily be used as a “slogan” by the proponents of the measure as it is a “brief striking phrase[.]” *See In re Title, Ballot Title & Submission Clause*, 4 P.3d 1094, 1100 (Colo. 2000) (holding that the inclusion of “as rapidly and effectively as possible” was a catchphrase).

**II. The fiscal summary is inaccurate and misleading.**

As explained above, under the measure, there is *no* sales and use tax for June 30, 2025. The fiscal summary for the measure, however, states that the temporary sales tax reduction applies to June 30. It provides: “By reducing the state sales and use tax rate from 2.9 percent to 2.89 percent from July 1, 2024 to June 30, 2025, the measure reduces General Fund revenue from sales and use taxes by an estimated \$17.7 million in FY 2024-25.” The analysis refers to the entire fiscal year (“FY 2024-25”). It does not include any indication that an entire day of sales tax (June 30) has been excluded as it refers only to the “reduc[tion of] the state sales and use tax from 2.9 percent to 2.89 percent.” At a minimum, the fiscal summary should not include a material, factual inaccuracy that would be misleading.

RESPECTFULLY SUBMITTED this 12th day of April, 2023.

RECHT KORNFELD, P.C.

s/ Mark Grueskin

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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #22** was sent this day, April 12, 2023, via U.S. Mail first-class, postage prepaid to the proponents:

Suzanne Taheri & Steven Ward  
6501 E. Belleview Ave, Suite 375  
Denver, CO 80111

s/ Erin Holweger