

CML Update

- 2017 Fiscal/Tax Legislation Impacting Municipalities
- HB17-1216: Sales Tax Task Force
- Standardized Sales Tax Definitions Project

2017 Legislative Session

Gallagher Amendment

- **Gallagher Amendment (referred ballot measure, 1982)**
 - Article X, § 3 adjusts the assessment percentage for residential property in relation to commercial property.
- **HB17-1349**
 - Amends CRS 39-1-104.2 to add the new residential assessment rate (RAR) of 7.2%

SB17-267: May the HPF be placed into an Enterprise?

- Is the Hospital Provider Fee (HPF) suitable to make an enterprise?
 - Office of Legislative Legal Services Memo, “Creation of a TABOR-exempt enterprise to charge and collect the hospital provider fee,” Dec. 31, 2015
 - AGO Formal Opinion No. 16-01

SB17-267: Does TABOR require the Ref C cap to be adjusted?

- **Article 10, § 20(7)(d):**
“... Qualification or disqualification as an enterprise shall change district bases and future year limits. ...”

SB17-267: Summary

- Moves HPF into an enterprise; thus, no longer be an impact of the fee revenue TABOR spending limit.
- Adjusts the annual state revenue limit (the "Ref C cap"), reducing it by \$200 million.
- Provides that lease-purchase agreements and general fund will allow up to \$1.8 billion in state transportation projects, with 10% reserved for transit projects. 25% of project revenue must be expended in counties with under 50,000 population.
- Requires that all state departments present budget requests in FY 2018-2019 represent a 2% overall reduction from FY 2017-2018.
- Provides rural schools will get a one-time infusion of \$20 million, and the State Education Fund will get \$30 million per year.
- Increases the state income tax credit for business personal property tax paid to \$18,000, changing it from the current credit only if tax is less than \$15,000 to apply to all amounts owed, and makes the credit permanent (currently at \$15,000, set to expire FY 2021-22).
- As of July 1, 2017, retail sales of marijuana are exempt from the state's general sales tax (2.9%). Starting on July 1, 2017, the special retail marijuana state sales tax rate is increased to 15%. Revenue allocations are changed from the current 85%/15% split between state and local government to a 90%/10% split.

HB17-1203: County authority to tax retail marijuana

- **City of Northglenn v. Board of County Commissioners, 2016 COA 181:**

Construing, CRS 39.28.8-203(1)(a)(VI), court held that, although the statute does not prohibit a county from imposing a special sales tax, the statute does not authorized it, citing the principles that: (1) the grant of taxing authority must be explicit not implied; and (2) counties only have those powers expressly conferred by the state.

HB17-1203: Summary

- Authorizes counties and statutory cities to collect voter approved special sales taxes on retail marijuana.
- The bill specifies that a county tax applies to retail marijuana sales in municipalities within the county if there are no municipal special sales taxes on retail marijuana.
- If municipalities within the county impose a special sales tax, then the county special sales tax only applies to sales in a municipality if the county and the municipality enter into an IGA.

SB17-112: Erroneous Sales & Use Tax Payments

- *Qwest Corporation v. City of Northglenn, 2014 COA 55:*

Three-year statute of limitations applied to the statutory remedy that when a taxpayer pays or remits sales/use tax to the wrong local government, it need not pay both.

SB17-112: Summary

- Beginning January 1, 2018, the remedy is no longer barred (by statutory timelines) but is only available to taxpayers so long as they have complied with notices providing instructions when remitting taxes on similar transactions.

SB17-279: Urban Renewal

Clarifies the applicability of HB15-1348 provisions to URA's that existed prior to January 1, 2016, and are materially modified thereafter:

- defines and clarifies when a change to an urban renewal plan is to be considered a substantial change;
- provides a 45 day period in which a taxing entity can petition a district court to enjoin an activity of a URA, including issuing bonds, incurring financial obligations, or pledging revenue.

HB17-1216

Sales Tax Task Force

Part I: Legal Framework

- Home Rule Authority
- Gallagher Amendment
- TABOR Amendment

Basis of authority for self-collection

- Colorado Constitution, Art. 20, § 6(g) [home rule, section on taxing authority].
- The Colorado Supreme Court: sales tax essential to self-government, and in most respects a matter of “local & municipal concern”. *Winslow v. Denver*, 960 P.2d 685 (Colo. 1998).

Gallagher Amendment

- Amendments to Article X of the Colorado state constitution result in property tax being a less productive revenue source for municipalities than sales tax.
- Over the last 35 years, the Gallagher amendment reduced local property tax collections as its ratio formula of residential to commercial property operated to reduce the residential assessment rate from 21% in 1983 to 7.2% in 2017.
- The Gallagher amendment modified the assessment of the property prior to the tax being paid. It has had its intended effect of providing tax relief for home owners by reducing the value of property subject to tax.

TABOR Amendment

- TABOR limits the revenue collected by all tax sources, including the property tax. This may result in duly assessed and paid taxes being refunded.
- If tax revenues are collected above the TABOR limit (population growth + inflation), they must be returned to taxpayers.
- TABOR further requires voter approval tax increases or the changes to the assessment ratio.
- TABOR has had its intended effect of requiring voter approval of tax changes and limiting tax revenue collections.

Local Sales Tax in Colorado

- In other states, municipal governments greatly rely on the property tax. On average, property tax generates 52% and sales tax 17% of total municipal tax revenues.*
- In contrast, sales tax is the primary tax revenue source for Colorado's municipalities, generating 69% of total municipal tax revenues. Property tax only generates 19% of municipal tax revenues.**

* Based on data from the U.S. Census, published in 2012.

** Based on data from DOLA, 2013.

Municipal Taxes

Of Colorado's 272 municipalities:

- 11 do not levy property tax;
- 41 of the municipalities levying a property tax collect less than 10% of their tax revenues from that source; and
- 39 municipalities do not impose a sales tax (*generally, because there are no retail sales activities*).*

* Based on data from DOLA, 2013.

Part II: Context for Self-Collection

- Differences in tax base
- HB13-1288 uniform base study and the 2015 DOR Audit
- Local tax administration and finance considerations

Broader Tax Base

Based on the HB13-1288 Uniform Tax Base Study, by 2012 Colorado state enacted 84 sales & use tax exemptions resulting in the reduction of state collections by \$2 billion.

*“Since the State is far less dependent on sales and use tax revenues, special interest groups have been very successful in convincing the Legislature to adopt certain industry-related exemptions. This proliferation of exemptions has caused the State’s tax base to be vastly different from local taxing jurisdictions, increasing complexity in Colorado.”**

* “Uniform Sales and Use Tax Base Throughout the State: Recommendations to the General Assembly to Establish a Revenue---Neutral Uniform Sales and Use Tax Base Throughout the State, Required by HB13--1288,” at p. 8.

Self-Collecting Home Rules

70 of the 101 home rule municipalities in Colorado have exercised their constitutional authority to set their own tax policy (base, rate, exemptions, preferences) in order to tailor their tax codes to the needs of their local economies and communities.

Alamosa

Arvada

Aspen

Aurora

Avon

Black Hawk

Boulder

Breckenridge

Brighton

Broomfield

Canon City

Carbondale

Castle Rock

Centennial

Central City

Cherry Hills Village

Colorado Springs

Commerce City

Cortez

Crested Butte

Dacono

Delta

Denver

Durango

Edgewater

Englewood

Evans

Federal Heights

Fort Collins

Frisco

Glendale

Glenwood Springs

Golden

Grand Junction

Greeley

Greenwood Village

Gunnison

Gypsum

Lafayette

La Junta

Lakewood

Lamar

Larkspur

Littleton

Lone Tree

Longmont

Louisville

Loveland

Montrose

Mountain Village

Mt. Crested Butte

Northglenn

Parker

Pueblo

Local Tax Administration

- 2015 State Auditor report on DOR's collection of local sales tax demonstrates the challenges of large-scale tax administration.
- Local tax administrators have the familiarity with their municipality's businesses and economy to help license retailers and source sales and use tax.
- Locally-directed audits can be more responsive to changes in activities.

Local Debt and Finance

- Financing tools, such as bonds, are based on a municipality's current tax code. Bond covenants typically do not allow for changing the base that was in place when the bonds were issued without approval of the bondholders.
- A municipality's operational and capital planning processes are based on long-range revenue projections. Locally set tax policy helps support strategic planning for community needs.

Part III: Simplifying Sales Tax

- Past simplification efforts
- Update on SJR14-038 Standardized Sales Tax Definitions

The Ethos of Simplification

- Proactively take reasonable simplification efforts. (Reasonable = no more than a *de minimus* revenue loss.)
- Develop and maintain open communication with business community and tax practitioners.
- Maintain home rule authority and collaborate on simplification efforts.

Past Efforts

- Standard definitions of “food” (1986), “telecom service” (1991);
- Standard definitions package (1992);
- Address locator project (2004);
- Colorado Blueprint (2011);
- Standard exempt purchaser affidavit (2015);
- Tax appeal bond (2016); and
- Standardized Sales Tax Definitions (on-going)

SJR14-038: Standard Definitions Project

What is the objective?

The objective of the project is to have all locally collecting municipalities determine whether to use the standard definitions in their sales and use tax codes.

Why is this important?

Colorado's self-collected sales tax system is more complicated than the state collected-locally shared systems in most other states.

Standard Definitions Project

Definitions Drafting Overview

- 23 member Steering Committee and subcommittees address some definitions
- Intensive drafting and review schedule.
- Comparison with earlier and/or similar standard definition efforts.
- Legal review.
- Business community review.
- Final review and comment by self-collecting municipalities.

Standard Definitions Project

What factors were considered in drafting?

- Local businesses perceive no change in tax treatment.
- Standard definitions for terms common within the 70 self-collecting municipalities.
- Designed so that any single municipality could tailor through imposition or exemption.

Standard Definitions Project

Local Ordinance Adoption Process

- Side-by-side comparison and redrafting of tax code.
- Fiscal review.
- Legal review.
- Internal stakeholder process.
- Communicate with council/board.
- Communicate with local business community.
- Schedule work sessions (if necessary).
- Schedule first and second/final reading.

Benefits

The many benefits of standardized definitions include:

- Becoming more transparent for taxpayers and businesses – *makes the tax code clearer.*
- Updating tax code – *uses the combined expertise of dozens of experts.*
- Demonstrates the value we have in our retail business community – *by adopting reasonable simplification efforts, we show our cooperative effort to make remitting tax easy.*
- Demonstrates our responsiveness to a legislative request – *when the General Assembly requests us to consider action, we will take these requests seriously, and may support if the requests do not impair our home rule authority to administer our taxes.*

Ordinances Adopted

City of/Town of:	Final Reading
Arvada	6/19/2017
Aurora	4/3/2017
Avon	3/28/2017
Denver	6/26/2017
Edgewater	5/4/2017
Fort Collins	5/16/2017
Golden	4/27/2017
Greenwood Village	5/1/2017
Longmont	4/25/2017
Louisville	6/13/2017
Parker	5/15/2017
Westminster	6/26/2017
Wheat Ridge	4/10/2017

Project Next Steps

- Build a one-stop site for adopted ordinances.
- Re-survey self-collecting tax administrators to get updates on plans and identify challenges for adoption.
- Update outreach plan.
- Offer assistance and encouragement to our colleagues.

Questions?