

The State Budget and “The Amendments” ~~ Gallagher, TABOR, 23, and the Senior Tax Exemption

Background on Colorado Property Taxes

Property taxes are set by multiplying the local tax rate (mill levy) by the taxable (assessed) value of a property. The mill levy is determined locally by the governmental entity imposing the tax, e.g., a school board. A levy of 20 mills means that a property owner will pay \$20 for each \$1,000 of assessed value. The Colorado Constitution requires that mill levies apply uniformly to all property within a jurisdiction. Thus, all taxpayers in a county pay the same county mill levy.

A property's assessed value represents only a portion of its market value. The portion is defined by an assessment rate, while the market value is determined by the county assessor. Assessment rates differ based on property classifications, such as residential, commercial, and agricultural. Most nonresidential property is assessed at a percentage of its market value, while residential property is assessed at a rate determined by law.

The Gallagher Amendment

The Gallagher Amendment limits residential property taxes. Under this constitutional provision, the residential assessment rate must be adjusted to maintain the proportions of residential and nonresidential assessed values. Since the Gallagher Amendment was approved by the voters in 1982, the total amount of residential assessed value has been capped at roughly 45% of the state total and the remaining 55% of assessed value comes from nonresidential (business) property.

Gallagher requires that the residential rate be adjusted whenever property is revalued, currently every two years. In general, the rate must decline to keep the 45%-55% proportions constant when the total value of residential property increases at a stronger pace than all other property. Conversely, the Gallagher Amendment requires an increase in the residential rate when growth in the value of nonresidential property outpaces residential property, although such an increase is prohibited under TABOR.

The TABOR Amendment (Taxpayers' Bill of Rights)

TABOR limits all taxes. This constitutional amendment, passed by the voters in 1992, imposes limits on property tax rates, assessment rates, and tax collections.

TABOR requires voter approval to change tax rates – to increase a tax rate and to impose a new tax -- at all levels of government, including the state.

TABOR prohibits an increase in the assessment rate for any class of property without voter approval. This provision primarily affects the residential assessment rate, because most nonresidential rates are set in the constitution and cannot be changed without voter approval anyway.

TABOR limits tax revenues. They are allowed to increase only by a growth factor. For school districts, annual allowable growth is inflation plus the percentage increase in student enrollment. Revenues in excess of this limit must be refunded unless voters agree otherwise (known as “deBrucing” for the Douglas Bruce, TABOR author).

Together, Gallagher and TABOR limit the ability of government to use property taxes as a revenue source -- TABOR caps total property taxes, while Gallagher caps the residential share.

Amendment 23

The voters approved Amendment 23 in November 2000. The constitutional amendment has three main provisions. It requires the Legislature to increase K-12 per-student and categorical funding by at least the rate of inflation plus 1% through 2011-12. After that, funding must increase annually by at least the rate of inflation.

Amendment 23 created the State Education Fund. Annually, the fund gets a portion of state income tax revenue in an amount equal to one-third of 1% of federal taxable income. The State Education Fund is exempt from TABOR spending limits.

Amendment 23 requires that the state's General Fund contribution to K-12 school funding be increased by at least 5% annually through 2011-12. This is called "maintenance of effort." But Amendment 23 has an "escape clause." If personal income does not grow by at least 4.5% between the last two calendar years, the Legislature can waive the 5% maintenance of effort requirement and not contribute at least 5% from the General Fund that year -- but contribute less than 5% from the General Fund and take the rest from the State Education Fund.

Contrary to the opinion of some lawmakers, our interpretation of Amendment 23 is that the Legislature cannot waive the base funding and categorical funding requirements of inflation plus 1%.

Senior Property Tax Exemption

In 2000, voters amended the Constitution to create a property tax exemption for two groups of people: qualifying seniors and the surviving spouses of seniors who previously qualified. To get the exemption, the qualifying senior must be at least 65 years old; be the owner of record for at least 10 consecutive years prior to January 1; have occupied the property as his/her primary residence for at least 10 consecutive years prior to January 1. For those who qualify, 50% of the first \$200,000 of actual value of the property is exempted. The Legislature has the flexibility to determine the actual exemption for each tax year and has set it at zero for FYs 03-04 and 04-05.

The cost of the exemption is paid by the state, rather than by local governments or other property owners. Beginning in 2003, the state is required to reimburse local governments by April 15 for the total annual amount of property tax revenues lost as a result of the exemption.

Repealing These Amendments

Repealing these constitutional amendments requires a statewide vote of the people. This can be done through an initiative (a constitutional change initiated by a citizen and placed on the ballot through a titling process) or a referendum (a constitutional change placed on the ballot by the Legislature through a two-thirds vote of both houses).

March 2003