Report of the
Task Force Concerning Tax Policy
2022 Annual Report

Submitted to the
Legislative Oversight Committee Concerning Tax Policy

October 1, 2022

Task Force Concerning Tax Policy

Membership as of October 1, 2022

Voting members

Higher Education – Tax Policy	Henry Sobanet, Chair
Tax Law Practitioner	Phil Horwitz, Vice-Chair
Office of State Planning & Budgeting	Kevin Amirehsani
Nonprofit Organization	Chris Brown
Tax Law Practitioner	Dianne Criswell
Statutory County	Commissioner Richard Elsner
Home Rule City/City and County	Steve Ellington
Department of Revenue	Mark Ferrandino, Executive Director
Office of International Development & Economic Trade	Jeff Kraft
Home Rule County	Commissioner Kelly McNicholas Kury
Statutory City	Jason Meyers
Small Business	Donald Pacheco
Certified Public Accountant	Stacey Roberts
Certified Public Accountant	Rhonda Sparlin
Large Business	Lance Williams
State Treasurer	Dave Young, Treasurer
Higher Education – Economics	Jeffrey Zax

Non-voting members

Office of Legislative Legal Services	Jason Gelender
Joint Budget Committee	Jon Catlett
Office of the State Auditor	Trey Standley
Legislative Council Staff	Greg Sobetski

Pursuant to Section 39-21-404 (3)(g), C.R.S., this is the required report of the Task Force Concerning Tax Policy (task force). The purpose of this task force is to study tax policy within the scope defined by the Legislative Oversight Committee Concerning Tax Policy and to develop and propose tax policy modifications for consideration. Since October 1, 2021, the committee met six times and issued a final report on the property tax treatment of short term rentals.

Issues Studied by the Task Force

Over the course of six meetings, the task force engaged in robust discussions on the property tax treatment of short term rentals. The task force unanimously approved its final report on the property tax treatment of short term rentals in January 2022. The report is included as Attachment A and may also be found here:

https://leg.colorado.gov/sites/default/files/images/committees/2017/final_report_on_the_property_tax_treatment_of_short_term_rentals.pdf

The task force plans to continue its work through the 2022 legislative interim and discuss issues raised in the 2022 Scope of the Task Force Concerning Tax Policy. All meetings are open to the public.

Meeting Dates and Topics Discussed

Meeting summaries are prepared after each task force meeting. All handouts provided at each meeting are posted on the task force website. The list below contains the dates of the prior task force meetings and the topics discussed at those meetings. Meeting summaries are available on our website at:

https://leg.colorado.gov/content/ilocctptf2021asubpanelsched

October 7, 2021

- Open task force discussion
- Short term rentals
- Sales and use tax
- Additional task force discussion

October 28, 2021

- Public testimony on short term rentals
- Task force discussion

November 8, 2021

- Perspectives on short term rentals and the homestead exemptions
- Task force discussion on short term rentals
- Research on adjusted gross income as the income tax base

December 13, 2021

- Discussion of task force report on short term rentals
- Next meeting topics

January 11, 2022

- Discussion of task force report on short term rentals
- Other business

January 28, 2022

- Discussion and approval of task force report on the property tax treatment of short term rentals

September 8, 2022

- Update from the Legislative Oversight Committee
- Task force duties and report
- Sales and use taxation of services
- Discussion of next steps

At the meeting on September 8, the task force discussed continuing its work on property tax issues. The task force is interested in and willing to offer its expertise to the Legislative Oversight Committee Concerning Tax Policy and the General Assembly on property tax matters.

Policy Proposals or Reports

The task force issued a report on the property tax treatment of short term rentals to the Legislative Oversight Committee Concerning Tax policy in January 2022. The report discusses tax policy considerations, existing impacts, data on impacts, a comparative analysis of other jurisdictions, and links to work by other tax committees. The report further notes implementation considerations such as the complexity of proportional tax, limitations of data, relevant constitutional or statutory provisions, concerns raised by assessors, and definition of terms. The report also highlights policy discussions around the issue and several alternative policy options.

The unanimously-approved task force final report on property tax treatment of short term rentals is included as Attachment A and may be found here:

https://leg.colorado.gov/sites/default/files/images/committees/2017/final_report_on_the_property_tax_treatment_of_short_term_rentals.pdf

The task force continues to be interested in issues related to property taxes and is willing to provide its expertise to the Legislative Oversight Committee Concerning Tax Policy and the General Assembly.

Communication and Collaboration Efforts

The task force follows proper notice and open meeting requirements, and has engaged stakeholders through presentations from interested parties and public testimony on the property tax treatment of short term rentals. The task force intends to find additional opportunities for public participation at future meetings.

Evidence-Based Feedback

To date, the Legislative Oversight Committee Concerning Tax Policy has not requested any evidence-based feedback from the task force.

Attachment A

Final Report of the Task Force Concerning Tax Policy on the Property Tax Treatment of Short Term Rentals

Submitted to the
Legislative Oversight Committee Concerning Tax Policy

February 2, 2022

Task Force Concerning Tax Policy

Membership as of January 31, 2022

Voting members

Higher Education – Tax Policy	Henry Sobanet, Chair
Tax Law Practitioner	Phil Horwitz, Vice-Chair
Office of State Planning & Budgeting	Kevin Amirehsani
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Higher Education – Economics	Jeffrey Zax

Non-voting members

Office of Legislative Legal Services	Jason Gelender
Joint Budget Committee	Alfredo Kemm
Office of the State Auditor	Trey Standley
Legislative Council Staff	Kate Watkins

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Submitted herewith is a report on the property taxation of short-term rentals from the Task Force Concerning Tax Policy (task force) pursuant to Title 21 of Article 39 of the Colorado Revised Statutes. The purpose of this task force is to study tax policy within the scope as defined by the Legislative Oversight Committee Concerning Tax Policy and to develop and propose tax policy modifications for consideration. The task force was charged by the oversight committee to provide information on the property tax treatment of short-term rentals.

Introduction

The Task Force was not provided with a distinct definition of short term rentals. However, it was colloquially discussed and understood to mean properties or units of properties that are part of the share economy and generally marketed on tech platforms such as AirBNB and VRBO.

Short term rental units of this type generally fall into three categories. The first is those units that are owned and primarily inhabited by full time residents who rent their units partially in space either by room or accessory dwelling unit, or partially in time for periods of the year when they are absent. The second is those units rented out by owners for whom the unit is not their primary residence, but is a secondary residence or a vacation home for the portion of the year that they are not using it. The third is those units that are held as investment properties with the short term rental income serving as the revenue and that are not otherwise occupied by those holding ownership of the unit.

Tax policy considerations. Several tax policy considerations should be kept in mind in any evaluation of the property taxation of short-term rentals. Many states have preferential tax treatment for residential property. However, Colorado's preference is among the most extreme. The assessment rate differential between residential and most non-residential property of 7.15 percent and 29 percent results in an effective tax rate on value of more than 4X for most non-residential property relative to residential property.[1]

Because Colorado's tax preference for residential property is so significant, policymakers should evaluate the intended extent of the tax preference, and should ensure that the tax preference is, to the extent practicable, limited to its intended recipients.[2]

Existing impacts. Short term rentals can provide positive contributions to a community including affordable lodging for students interviewing at graduate schools or for new jobs; supplementing a dearth in traditional lodging beds in resort communities; and, expanding tourism opportunities and the sales tax that often accompanies such activity. Testimony heard by the Task Force from resort community representatives universally acknowledged that STRs have an important role to play in those economies. Testimony heard by the Task Force from STR operators additionally identified the

1. See the discussion in "A Good Tax: Legal and Policy Issues for the Property Tax in the United States", Joan Youngman, published by the Lincoln Institute of Land Policy, 2016, Chapter 11: Tax Limitations and Market Value Assessment, pg. 193, Colorado discussion starting on pg. 199.
2. As noted in "A Good Tax", "[a]ssessment limits address the problem of volatility in property taxation, but at a heavy price. They can undermine the distribution of the tax according to property value, providing the greatest benefit to the most expensive property experiencing the most rapid price appreciation. Their complexity diminishes the transparency and accountability that are among the greatest strengths of the property tax." Id. at 211.

opportunity for STR revenue to supplement household budgets, achieve homeownership, weather economic challenges including avoiding foreclosure and make second home/retirement home ownership more viable.

Yet the growth in popularity of the share economy over the last several years has also created impacts from STRs that are detrimental to communities. The erosion of neighborhood and community character; conversion of former long term rentals thereby diminishing the workforce housing rental market; acquisition of units for short term rental revenue which drive up the market price for resident ownership; strain to services via increased demand including for public safety, parks and recreation, and use of roads; and violations of quiet enjoyment of one's private property, are all impacts that have been experienced in communities which have been affected by the popularity of short term rental bookings.

The Task Force additionally heard some testimony from legislators on the Oversight Committee that the state has a structural imbalance in its budget that will only grow overtime, and that there is interest in looking to local revenue sources for help in stabilizing the funding of schools. Equitably assessing commercial activity as such in local communities might serve as a revenue source. The Task Force has discussed whether STR activity is commercial activity and has looked to other elements of the state's tax code to determine as much. Additionally there may be a tax equity issue between lodging properties that have a commercial tax classification like hotels and motels and some short-term vacation rentals.

Data on impacts. Data on impacts varies widely from community to community. It is easier to obtain and track in those communities who have regulations licensing short term rentals or jurisdictions that contract with third party data analysts to collect information about short term rental activity.

In Summit County, for example, their licensing program has revealed that about one in three of their housing units is used as a short term rental and of those licensed rentals, 86 percent are owned by non-resident owners. Similarly, in Pitkin County, survey results reported in the Mountain Migration Report indicate that one third of second home owners intend to short term rent their homes, while approximately 75 percent of those short term rentals operating in the unincorporated county are thought to be non-resident occupied.

Park County supplied information related to its strain on public safety resources related to STRs. The information provided relies on the person requesting the service stating that they are at a short term rental, or the location has become known to the Emergency 911 call center and they then identify it as a short term rental. Some of the information that is available from Park County follows:

North-West Fire protection District reports at least 20 percent of their calls are attributed to STR's. Again, the issue they have is that Park County is in the preliminary stages of licensing STR's so the list is incomplete. This 20 percent for the months January – September 2021 accounts for 105 calls. Given that the number of personnel responding averages 4, and the average time to make the call is 4 hours, this accounts for 1,680 hours, plus the equipment costs.
Separate from North-West Fire, the Park County Dispatch reported the other fire districts have reported a total of 216 calls related to STR units. Using the same average of 4 people and 4 hours this

amounts to 3,456 hours.

Combining the two brings the total to 5,136 hours, or a total of 3 FTEs. Further review will be necessary to determine the total impact, but this is a substantial amount of time for the small fire districts.

Data on possible revenue impacts. The actual amount of revenue raised by particular taxes are a function of a large number of variables, most of which are outside the scope of the review of the task force. The amounts discussed below are based on available data and time allowed, however, they should be viewed as illustrative only. If the property tax treatment of short term rentals is changed from residential to commercial, the impact is in the assessment rate that is used to calculate the property tax. While Senate Bill 21-293 temporarily reduced property tax assessment rates, the long-term residential rate of 7.15 percent and commercial rate of 29 percent was used for this analysis. The additional revenue generated from changing the assessment rate from 7.15 percent to 29 percent in some communities can be substantial. Summit County, which has debruced, has one of the highest number of short term rentals and should serve as the most substantial case for additional revenue.

Table 1
Summit County

Description	# of Properties by type with STR permit	Total Actual Value	Total Assessed Value 7.15%
Single Family	1266	1,858,889,305	132,928,341
2 & 3 Unit	279	312,484,738	22,342,659
Townhouse	530	481,362,174	34,417,404
Duplex-Triplex (Unplatted)	2	3,120,100	223,087
Mobile Home Land	37	7,775,000	555,912
Residential Use/Comm. Property Land	13	26,338,100	6,401,908
Condo	5717	3,374,904,047	241,305,807
Quarter Fee	8	5,551,200	396,911
Timeshare	581	336,066,000	24,028,724

Table 1 (cont.)
Summit County

Description	# of Properties by type with STR permit	Total Actual Value	Total Assessed Value 7.15%
Mobile Home Improvement	25	4,586,800	327,959
Leasehold Condo	4	1,984,600	141,898
Residential Use/Comm. Property	1	455,600	69,939
Commercial Condo	1	74,100	21,489
	Total # of Properties with STR permit		**Total Current Assessed Value**
	8464		463,162,038

At a 29 percent commercial rate, the total current assessed value would climb to $1,882,772,512 in this Summit County example. This calculation obviously doesn't factor in any exemptions that the legislature might consider.

The impact on revenue for the Summit County School District would be substantial. Currently the district has a total mill levy of 19.183. The total revenue raised from short term rental properties using the 7.15 percent assessment rate is approximately $8,884,818.

The question then is, if the assessment rate is changed to 29 percent how much additional revenue would be raised. If the assessment rate is changed, the total assessed value moves from $463 million to $1.878 billion. Using this number the approximate new value for the taxes collected would be $36,036,326, or an increase of $27,151,507, or 306 percent. Given the estimate of 8,464 properties this amounts to an average annual increase in each properties tax bill of $3,307.88.

Table 2
Summit County School District

Property Value	Assessment Rate	Assessed Value	Mill Levy	Taxes Collected
6,477,776,755	7.15%	463,162,038	19.183	8,884,818
6,477,776,755	29%	1,878,555,259	19.183	36,036,326

The impact on the Fire Districts is also dramatic. The average mill levy for the districts in Summit County is 9.105. Using this to calculate the impact on the change follows.

Table 3
Summit County Fire District

Property Value	Assessment Rate	Assessed Value	Mill Levy	Taxes Collected
6,477,776,755	7.15%	463,162,038	9.105	4,217,090
6,477,776,755	29%	1,878,555,259	9.105	17,104,251

Park County also has numerous short term rentals, and the data isn't as accurate but it will provide another look at the impact the assessment rate change could have. Park County that there are over 1,200 short term rental properties. If you use 1,200 as our base, with an average value of $378,000 for each property the impacts are shown below. The mill levy used is the average for the two school districts.

Table 4
Park County

Property Value	Assessment Rate	Assessed Value	Mill Levy	Taxes Collected
453,600,000	7.15%	32,432,400	20.021	655,458
453,600,000	29%	131,544,000	20.021	2,658,504

In order to really understand the impact of the change, we also need to look at what it would cost an individual owner. Using the Summit County example, the cost per $100,000 of value would break down as follows.

Table 5
Summit County

Property Value	Assessment Rate	Assessed Value	Total Mill Levy	Taxes/$100K of value
100,000	7.15%	7,150	47.891	343.00
100,000	29%	29,000	47.891	1,389.00

Comparative analysis of other jurisdictions. Legislative Council Staff endeavored to research other states' approaches to the property tax treatment of short term rentals. Their work is linked here.

To summarize from that report, 22 states do not classify properties for tax purposes; 18 states do not change their rates for STRs from residential to commercial; seven states differentiate their rates for STRs based on owner occupied vs. non-owner occupied; and the state of Missouri is the only state to classify all STRs as commercial, with the exception that the first property is assessed 75 percent commercial and 25 percent residential. Various local governments around the country also have their own custom approaches to levying property tax on STRs. A select few are illustrated in the table below.

Table 6
Comparative Analysis of Jurisdictions

Jurisdiction	Property Tax Rate on STRs	State Assessment Rate
Cook County, MN	STRs treated as residential if rented for 182 days or less per year, and treated as commercial if rented for 183 days or more	State assesses general residential at 1.0-1.25%, most apartment complexes at 1.25%, and commercial at 1.5-2.0%
Maui, HI	**STRs taxed at 11.1%** **Owner-Occupied STRs taxed at 4.4%** Hotels/resorts taxed at 1.18% Time shares taxed at 1.46% Commercial taxed at 0.63% Apartments taxed at 0.56% Non Owner-Occupied Residential taxed at 0.55%-0.8% Owner-Occupied Residential taxed at 0.24%-0.27%	State generally does not set assessment rates; counties levy property tax directly
Kauai, HI	**Owner-Occupied STRs taxed at 0.0051%** **STRs valued at $1.3M or more and improved with a dwelling unit are taxed at 0.0094%** **All other STRs are taxed at 0.0099%** **Hotels/resorts taxed at 0.0109%** **Vacation rentals taxed at 0.0099%** **Commercial taxed at 0.0081%** **Non Owner-Occupied Residential taxed at 0.0061%** **Owner-Occupied Residential taxed at 0.0031%**	State generally does not set assessment rates; counties levy property tax directly
14 Municipalities in Massachusetts	**Property owners who live year-round in the municipalities, or in some cases lease yearlong to town residents can reduce their property valuation by a variable amount. Reductions in assessed value are then generally offset by a general increase in the residential tax rate.**	Municipalities set their own tax rates, though state law limits local collections to 2.5% of properties' total value

Sources: Lincoln Land Institute State-by-State Property Tax at a Glance, Maui County. BusinessNorth website (http://www.businessnorth.com/businessnorth_exclusives/short-term-rentals-pose-taxation-dilemma/article_2330939c-84c5-11ea-bc03-1be5ab619e0b.html), Minnesota State House website

(https://www.house.leg.state.mn.us/hrd/pubs/ss/ssptvart.pdf), Massachusets Executive Office of Housing and Economic Development, Massachusetts Municipal Association, Kaua'i County Code

Testimony was heard by the Task Force from STR operators, assessors, and local government representatives that any legislation should consider an exemption for STRs operated in a primary residence. In addition, a number of other states and local jurisdictions considering STR tax changes have proposed varying the taxation requirements based on legal entity or the number of STRs owned by the property owner, although this might prove difficult to enforce due to complex chains of ownership (e.g. owners utilizing multiple partnerships and limited liability companies) and lack of data on owners' other STRs.

Link to work by other tax committees. During the summer of 2018, the Alternatives to the Gallagher Amendment Interim Study Committee met to discuss alternatives to the now-repealed Gallagher Amendment, which affected the relative property tax assessment ratios between residential and commercial properties. One of the policy options discussed was reclassifying STRs as commercial property. One bill was considered to this end, but was not voted on for acceptance as a committee bill. As part of the committee, LCS prepared an Appendix showing the estimated percent of housing units used as short-term rentals in each county, which ranged from 0 percent in some counties (primarily on the Eastern Plains) to 20 percent or more in mountain counties.

Implementation Considerations

Complexity of proportional tax. Legislation considered by the Legislative Oversight Committee Bill 9, sponsored by Senator Hansen, looked at the proportion of use of a unit as either a residence or a short term rental. It proposed to require commercial tax assessment for any days a property is rented as a short term rental, unless it met criteria for an exemption.

The Task Force heard concerns from assessors about the implementation efforts that would be needed to accurately and equitably assess properties that operate as both a residence and as a short term rental on an allocation basis. This type of approach is regarded by the assessors to be overly burdensome given the potential nightly change in use and lack of central repository of data (although some local governments do subscribe to services that help them locate STRs). In their testimony, we heard a preference of a "lights on or off" approach which would support either the residential assessment or the commercial assessment, or some third, new assessment rate for short term rentals.

We also heard evidence from assessors that there is some precedence in their processes for an allocation approach. As described above, hotels may often be split between residential and commercial square footage depending on whether a portion of it has been condominiumized. Similarly, assessors regularly deal with mixed use assessments in buildings. Additionally, the annual personal property declarations required by county assessors rely on self-reporting of assets and could be one method used if the legislature requires owners to disclose the proportion of time that a property is rented short term.

Current approaches to a Proportional Allocation

- Mixed use buildings are regularly split by square footage and assessed either commercially or residentially
- Hotels that are condominiumized are regularly split by square footage for those areas which serve as rooms assessed residentially, and those areas serving the hotel e.g. restaurant, lobby, assessed commercially
- Hotels and motels that have stays for 30 days or longer regularly turn in affidavits for consideration of the residential rate for those portions of the hotel, as well as record this information on their sales tax returns as these sales are exempt
- Personal property assessment is based on self-declarations submitted in the form of an affidavit

A note on affidavits: Though there is precedence, one assessor said "they aren't worth the paper they are written on" and that dealing with thousands of affidavits statewide is burdensome for assessors. The Task Force additionally received data from LCS staff regarding the IRS treatment of Residential Rental Property. It offers definitions of a dwelling unit as well as how expenses are divided for income tax reporting purposes among personal use and rental use. According to IRS Publication 527 (Residential Rental Property) *"If you have any personal use of a dwelling unit (including a vacation home) that you rent, you must divide your expenses between rental use and personal use."* Further, the IRS goes on to describe a dwelling unit:

- ***Dwelling unit****. A dwelling unit includes a house, apartment, condominium, mobile home, boat, vacation home, or similar property. It also includes all structures or other property belonging to the dwelling unit. A dwelling unit has basic living accommodations, such as sleeping space, a toilet, and cooking facilities. A dwelling unit doesn't include property (or part of the property) used solely as a hotel, motel, inn, or similar establishment. Property is used solely as a hotel, motel, inn, or similar establishment if it is regularly available for occupancy by paying customers and isn't used by an owner as a home during the year.*

    - ***Example****. You rent a room in your home that is always available for short-term occupancy by paying customers. You don't use the room yourself and you allow only paying customers to use the room. This room is used solely as a hotel, motel, inn, or similar establishment and isn't a dwelling unit.*

The publication goes on to offer a calculation for determining personal use:

- "You use a dwelling unit as a home during the tax year if you use it for personal purposes more than the greater of:
    1. 14 days, or
    2. 10% of the total days it is rented to others at a fair rental price."

Therefore, it might be assumed that owners of short term rentals are already accustomed to reporting use of their units on a proportional basis since they are required to do so on their income tax returns.

Limitations of data. Data availability, also referred to by assessors as data discovery, may be a prerequisite for the success of any policy regarding land use regulation or taxation or at least a

complementary tool to use for auditing. Individual jurisdictions have contracted to access such data to both inform and audit their regulatory schemes, yet a statewide tax policy approach may necessitate statewide data availability to ensure equitable implementation. In addition to the widely known STR platforms, others including property management and real estate firms, hoteliers, and fractional ownership corporations additionally manage and execute listings and contracts for short term rentals. The City and County of Denver alone track 80 different websites. Other listing services may be more proprietary and less transparent yet still engaging in short term rental activity around the state.

Developing a comprehensive, legally reliable and defensible clearinghouse for listings and occupancy would provide a powerful tool for local jurisdictions and if done at a statewide level, would provide equity and consistency across jurisdictions even if 100 percent of data could not be accessed or inventoried. A statewide clearinghouse could additionally relieve burden on the 64 individual counties to receive and transform datasets. Guidance from the Office of Legislative Legal Services on any legal guardrails to require such information sharing by STR facilitators and operators is recommended.

Across the state, different jurisdictions are accessing and utilizing data from the marketplace facilitators and listing agencies (e.g. VRBO/AirBnB) in different ways. Jurisdictions with licensing programs are already likely to be utilizing this data. However, the authority extended to counties to license short term rentals is very new (2019). The uptake in standing up such a regulatory scheme is slow, and is unlikely to ever be ubiquitous.

Assessors testified to the current complications with data discovery for a number of reasons. These include the number of platforms acting as marketplace facilitators; the cost to pay third parties to conduct such data collection; and the difficulty with matching data from different platforms to the forms of data in their databases. The Task Force additionally heard the ways that the assessors would beneficially use the data such as to audit their personal property declarations both for submittal and for accuracy. Synergy with statewide sales tax data might also provide additional auditing utility.

To implement a statewide change to property tax assessments for short term rentals the assessors expressed a desire to have the legislature identify a statewide department to create a statewide database with data that is scrubbed to be usable by all 64 counties (so it can be matched to parcel IDs for example). This new program may also be complemented by a legislative requirement that directs all platforms operating in the state to report to the identified state agency.

The Task Force heard earlier in the fall from county commissioners stating that local jurisdictions could additionally benefit from such a database in order to analyze zoning decisions relative to short term rentals and to audit compliance with their licensing programs. On this latter point, the data would need to be admissible in court in order to support enforcement efforts.

Relevant Constitutional or statutory provisions. A change in the property tax classification of STRs will result in different revenue outcomes depending on whether a local jurisdiction has removed its TABOR expenditure limit or not. Many municipalities, counties, schools, and special districts have also sought voter approval to successfully temporarily or permanently remove their TABOR expenditure limits for all or part of their tax revenues. If a higher property tax rate is applied to short

term rental units, then it is reasonable to expect that local jurisdictions with a broad form debrucing will have the most flexibility to retain increased revenues from a potential future change in the property tax classification of STRs. In contrast, other local taxing jurisdictions may need to seek new or additional voter approval to expend the additional revenues.

Local taxing districts which have not received voter approval for a broad-form debrucing will only be able to retain increased revenues to the extent the revenues do not exceed their TABOR limit. An additional dynamic to note for increased property tax revenues in taxing districts where the TABOR limit applies is that mill levy credits, which functionally reduce the property tax levied on residential property, may be necessitated; these credits have the effect of increasing the proportion of commercial property tax revenue generated due to the addition of short term rentals assessed as commercial property. In other words, those residential properties in communities with a large number of short term rentals may experience a tax revenue reduction if STRs are taxed at the commercial rate if these communities have not approved retention of the revenues collected above the TABOR expenditure limit.

Another limit which applies to property tax revenue collections is the 5.5 percent statutory limit in Section 29-1-301, C.R.S., *et seq*. Depending on the property tax classification composition of a specific property taxing district, as well as any voter approved levy changes, statutory changes in the classification of property may result in revenue that exceeds the statutory 5.5 percent levy (or revenue collection) limit.

Finally, Article 10, section 3 of the Colorado Constitution sets forth the requirements to ensure property tax uniformity by directing that property taxes must be set forth by generally applicable laws providing direction on ensuring uniformity in valuation and classification. For policy makers considering whether it would be appropriate to place STRs in a separate property tax classification, this constitutional provision is helpful to consider when developing such proposals.

Assessors concerns. Assessors described to the Task Force the different approaches they use in assessments - market, income, and cost - as well as when they are allowed to use either approach based on constitutional and statutory requirements. We heard testimony that assessors would prefer to utilize the market based approach for short term rentals. They explained that the cost and income approaches for short term rentals would be extraordinary and that the outcome should be substantially similar to the outcomes of the market approach.

The fact that properties are currently assessed based on their use as of January 1st raised some conversation and concerns. Realtors, assessors, and others noted that because taxes are assessed in arrears as of the use on January 1st that a mid-year change of use could create liability for a new owner. In order to protect a new buyer's tax liability for past uses, there may need to be statutory language requiring disclosures in real estate transactions so that the buyer and seller could negotiate the costs of the tax assessment. The January 1st date also raised some concerns about whether assessors would be able to accurately capture a STR operation because of the fluidity of the activity. A residence could easily make a change of use to a STR any time after January 1 and the current process wouldn't identify it.

While assessors have a regular practice of assessing mixed use properties proportionally based on

square footage, difficulties arise when trying to assign time periods of short term rental use that occurs throughout the year after January 1. If the Legislature were to elect to define STRs based on calendar days and square footage, and direct assessors to commercially assess them on this basis, assessors would continue to have data problems to validate these criteria. Assessors do not always know where STRs are located, the nights they are available or were rented, and which portion of the property was used as an STR. Others argued that this was simply an information hurdle that could be overcome through business disclosures to a statewide repository and additionally pointed out that hotels are commercially assessed regardless of their bookings.

Assessors predominantly agreed that a "light switch" approach to assessment would be the most feasible way to implement a change in assessment rate for STRs. This could be approached several ways. One way would be to create an exemption for owner occupied units that would be demonstrated by some sort of proof such as voter registration and would entitle those owners to the residential rate. Another way would be to either simply assess all STRs commercially for all periods of the year, or alternatively, create a third rate somewhere between the residential and commercial rate for all STRs. And finally, it was also suggested that the state simply consider a flat tax rate for all uses arguing that perhaps some of the inequity is felt because of the large disparity between the low residential rate and the high commercial rate.

Definitions of terms. In addition to the short term rental use commonly understood by the share economy platforms AirBnb and VRBO, other uses identified have included fractional ownership, timeshares, real estate held in trust such as family trusts held as LLCs, newer models that assign ownership shares such as the Pacaso model, hotels that are partially condominiumized, short term rentals that are resident owned, short term rentals that are owner occupied, rehabilitation centers, and nursing homes. Additionally, there has been some testimony regarding this use as equivalent to a home business.

The Task Force has not drilled deep into the particular similarities or differences between the uses listed above, or offered a thorough definition of short term rental. The Task Force was additionally not provided with a definition to work from in the defined scope of work handed down from the Oversight Committee. The only detailed definition of short term rental offered for consideration by the Task Force comes to us through Senator Hansen's proposed bill to the oversight committee, Bill 9. In that, short term rental is defined as:

"SHORT-TERM RENTAL UNIT" MEANS AN IMPROVEMENT THAT IS DESIGNED AND USED AS A PLACE OF RESIDENCY BY A PERSON, A FAMILY, OR FAMILIES, BUT THAT IS ALSO LEASED OR AVAILABLE TO BE LEASED FOR ONE OR MORE SHORT-TERM STAYS.THE TERM ALSO INCLUDES THE LAND UPON WHICH THE IMPROVEMENT IS LOCATED AND A PARCEL THAT WOULD OTHERWISE BE CLASSIFIED ONLY AS RESIDENTIAL LAND UNDER SUBSECTION (14.4)(a)(I)(C) OF THIS SECTION"

It is possible that this definition conflicts with timeshare and fractional ownership uses such that the owners of such units are the short term occupants and the question of whether something like fractional ownership is a "place of residency" has not yet been debated.

Unintended consequences. The Task Force additionally heard testimony from assessors that identified that there could be statutory conflicts with commercial assessment of short term rentals. For example, statute currently calls for hotel-condos to be assessed at the residential rate. This item could be one area that the legislature wishes to revisit or revise, particularly as it is concerned with the state burden of school financing because practically, any hotel, even if it is owned by a international hotel conglomerate, if it has a condominiumized plat, is assessed the residential rate for square footage of its rooms, and commercial for the items that are strictly to serve the hotel such as the lobby, bar, etc. Several assessors noted that changing hotel-condo assessments back to commercial rates would be a way for the Legislature to take a step toward equitably assessing commercial lodging uses.

Some assessors and mortgage brokers have additionally identified outstanding questions related to residential financing and utility costs should a change in taxation assessment be enacted. Regarding homes with VA financing, mortgage appraisers have recently denied or amended financing agreements if a home is discovered to be operating as a STR. The VA has not made similar determinations for other home based business types, so these financing implications appear to be limited to STR activity. There was additionally a question of whether or not Fannie Mae and Freddy Mac would purchase mortgages for homes that are commercially assessed. It was also identified that a change in assessment may result in different lending terms for an owner when their mortgage company is alerted to a larger tax bill via their escrow payment process. And finally, a commercially assessed property may be subject to higher utility rates. The Colorado Realtors Association additionally thought that changes to the MLS might need to occur to alert potential buyers of the commercial status of STRs.

While classifying STRs as commercial would increase the property tax liability of property owners, it is likely that a significant percentage of the tax is passed on to consumers, as several studies indicate. It is also important to note that property owners are able to partly offset state and local taxes on their income tax returns. Individuals who itemize their income taxes can deduct state and local taxes via the State and Local Tax (SALT) Deduction. In addition, businesses can deduct state and local taxes as a trade or business expense (IRC Section 162). Both of these federal income tax deductions "flow through" to state income tax returns. Thus, for those property owners with income tax liability, any increased property tax liability would be partly dampened through these federal and state income tax deductions.

The impact on counties and districts varies based upon whether they have eliminated their TABOR limits, and if not, whether they are at their TABOR cap. An increase in the possible revenue would not happen if the taxing district or county is at its TABOR cap. In that case any increase in revenue due to the change in assessment rate would most likely mean a temporary reduction in the mill levy, which in turn would lower the taxes for existing commercial and residential properties. The only properties that would see an increase would be those STR's that are now taxed at the commercial assessment rate.

Other implementation considerations. Other implementation considerations include:

- A start date that gives time for the implementation structure to be established and for any unforeseen errors to be remedied before the effective date;

- A framework where compliance with the new law can leverage other tax payment systems already in place, which will assist with enforcement;
- Establishing a uniform policy statewide.

Policy Discussion and Alternatives

Given that Colorado has decided to apply different property tax rates to different categories of use, the discussion at the Task Force has debated whether short term rental use aligns more closely with residential property use or commercial property use. Comparative uses identified have included fractional ownership, timeshares, real estate held in trust such as family trusts held as LLCs, newer models that assign ownership shares such as the Pacaso model, hotels that are partially condominiumized, short term rentals that are resident owned, short term rentals that are owner occupied, rehabilitation centers, and nursing homes. Additionally, there has been some testimony regarding this use as equivalent to a home business.

In addition to, or alternative to, the reclassification of short-term rentals as commercial or as a new class of property, policymakers may want to evaluate whether the residential classification itself should be narrowed. As noted in the paragraph above, the taxation issues presented by short-term rentals are shared by shared-ownership structures such as the Pacaso model, condominiumized hotels, condominiums themselves, and any number of other similar structures. To the extent that policymakers determine that the residential classification tax preference should be limited, policymakers may wish to consider a more comprehensive approach to the problem, including whether the tax preference should be limited to properties being used as principal residences.

There was a general sense of the Task Force that there is an amount of short term rental activity that changes the nature of a property from being a strictly residential property. The IRS standard could be one approach or a longer one such as 30 days as the Task Force heard from the Mayor of Salida. While the Task Force was asked to look at property tax treatment, it may be appropriate for the State to consider other levies that achieve a "pay for impact" goal at the local level and "assist with school finance" at the state level.

Other frameworks to consider include a statewide lodging or excise tax with a shareback to local jurisdictions. Some considerations of this are in the following paragraphs.

Other alternative taxation. As background, many home rule municipalities levy a lodging tax and use the revenue for a variety of purposes. In addition, Section 30-11-107.5, C.R.S. allows counties to seek voter approval to levy a lodging tax of up to two percent on the purchase price paid or charged to persons for rooms or accommodations, including STRs. About 30 counties have lodging taxes in place. County lodging tax proceeds must be used for tourism promotion, and cannot be used for any capital expenditures, with the exception of tourist information centers. County lodging tax does not apply in home rule municipalities with their own lodging taxes (even if the municipal lodging tax is below two percent). While statutory home rule municipalities are not permitted to levy a lodging tax, a number impose a lodging occupation tax under the auspices of their authority to license, regulate, and tax businesses and occupations in Section 31-15-501(1)(c), C.R.S. These lodging occupation taxes are levied on a per room/accommodation, per day basis. Further, Section 29-25-105, C.R.S. allows

counties and municipalities to band together to form a local marketing district (LMD), with the approval of commercial property owners who account for 50 percent+ of the district's commercial assessed value. Section 29-25-112, C.R.S. allows LMD to seek voter approval to levy a tax on the price of rooms or accommodations, including STRs.

Proceeds must be used for the organization, promotion, marketing, and management of public events; activities in support of business recruitment, management, and development; or coordinating tourism promotion activities. Like county lodging tax, LMD tax proceeds cannot be used for any capital expenditures besides tourism information centers. This tax is not capped at two percent. There are currently six LMDs in Colorado. State and local sales and use tax is also levied on lodging stays of less than 30 consecutive days, including at STRs. Some home rule municipalities have increased the sales tax rate on STRs and/or require the proceeds to be used for affordable housing initiatives.

If policymakers considered non-property tax alternatives to addressing the impacts of STRs on local property taxing districts, amending the rules surrounding the excise taxes currently imposed on lodging might be an alternative. However, revising current laws may upset the programs or infrastructure that are currently supported or financed by these lodging or sales and use taxes.

The most important concept for any alternative is to address the impacts for all levels of local governments supported by property taxes. With some exceptions, sales and use tax revenues are not directly levied, distributed, or allocated to special districts or school districts. Any excise tax alternative that may be collected at the state or county level would need to be allocated to all local property taxing districts to be a fair and equitable alternative.

Conclusion

A substantial number of stakeholders have taken great interest in the discussion of property tax treatment of short term rentals. The tension in local communities between the rights of individual property owners and the impacts on broader community interests are at the heart of the issue. Values related to equitable treatment of tax law, responsibility to balance state and local budgets, and delivery of efficient government services have all been debated and hopefully summarized here for the Legislative Oversight Committee Concerning Tax Policy to consider.