



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

December 18, 2023

TO: Legislative Oversight Committee Concerning Tax Policy
FROM: Task Force Concerning Tax Policy Members
SUBJECT: Task Force Member Comments on Bills Referred for Introduction by the Legislative Oversight Committee Concerning Tax Policy

The Task Force Concerning Tax Policy (task force) reviewed the bills recommended by the Legislative Oversight Committee Concerning Tax Policy for introduction during the 2024 legislative session. Please note that, unless indicated, the comments provided below on the bill recommendations represent the *individual viewpoints of task force members*, not the task force as a whole. In addition, individual task force member recommendations on the bills below are based on the subject matter expertise of the task force members themselves and do not commit their representative entities or organizations to any position or actions.

More information on the task force may be found here:

<https://leg.colorado.gov/content/ilocctptf2023asubpanelsched>.

Comments from Task Force Members

Task force members had no comments on Bill A (Adjusting Certain Tax Expenditures). The comments for Bills B through E may be found in Attachment A.

Task Force Comment on Bill D

The task force as a whole reached a consensus comment on Bill D (Tax Policy Analysis by the Legislative Branch):

"It is gratifying to see the role of the task force extended. We have been the beneficiaries of and grateful for the contributions from various executive branch and legislative resources. If future work follows the same path as our work to date, the task force would greatly benefit from some dedicated research and writing time from the legislative staff services offices. We know this is not feasible at this time under existing resources, but the ability to produce work solely with volunteer time is inconsistent and may not be sufficient for a quality product over the long term.

Additionally, the time frame in which the task force has to complete its work could be better harmonized with the requests from the oversight committee and the work of other standing or interim committees or task forces.

The chance to discuss what might be possible with the bill's sponsors would be welcome."

Bill B: Issuance of Treasurer’s Deed

Task Force Member	Comment
Steve Ellington - Home Rule Municipality Representative	Bill "B" was created after several stakeholder meetings and input opportunities. If amendments are deemed necessary, I highly recommend that the Colorado County Treasurer & Public Trustee Association, and/or its lobbyists (Jason Hopfer & Eliza Schultz), be consulted as they are the local government officials that administer the process and understand the impacts on property owners and tax lien investors while ensuring the process is efficient.

Bill C: Lodging Property Tax Treatment

Task Force Member	Comment
Rhonda Sparlin - CPA Member	<p>The draft legislation requires assessors to issue notices timely and track the number of days occupied, which seems to be a significant burden and additional cost</p> <ul style="list-style-type: none"> ● How will the information gathered be tracked? ● How and when will the notices be sent to the taxpayers? ● What remedies will be established if the taxpayer is not notified timely of a change in classification?
Rhonda Sparlin - CPA Member	A statewide database for short-term rentals should be an available tool but may be burdensome for the property tax administrators. Are the costs to maintain and verify the database for accuracy also considered as part of the fiscal note for this legislation?
Rhonda Sprlin - CPA Member	Are there penalties for noncompliance? If an owner does not provide the short-term rental information, are they automatically classified as a lodging property? Will there be a significant monetary penalty for failure to send in the occupancy information?

Attachment A

<p>Rhonda Sparlin - CPA Member</p>	<p>Most lodging type properties are valued under a market approach (income) known as a going concern</p> <ul style="list-style-type: none"> ● How would that be applied to the short term rental? If the rental hits the 91 days, thus triggering the classification change, will it be valued on income for those 91 days, or projected to what it could have been if occupied? Will the assessor have flexibility to choose one of the two values (residential vs short term rental)? ● Regardless of use, this is still most likely a second home, with a market value similar to other traditional homes in the area that may be a primary residence; this proposed bill is trying to tax business income through a property tax and business income is already being taxed through income taxes, sales taxes, lodging taxes, etc. ● The bill also does not indicate if the base value (residential value) will still be modeled and reviewable for periods where the property falls below the short term rental class, since this is an annual analysis ● Does the classification change impact the appeal process
<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>The Task Force on Tax Policy contemplated different property tax treatment of STR units. Report linked here.</p>
<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>Clarify whether exchange of value would qualify under the definitions as an exchange of payment. For example, home swap websites have become more popular where strangers similarly book short term stays but do not exchange money.</p>
<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>Clarify if the establishment of a database is considered to be a pilot. As written, there is no sunset or review date and will be a meaningful resource for implementation of the law by assessors.</p>
<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>The bill would close a significant loophole in the equitable taxation of commercial activity.</p>
<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>There are already several examples of assessors handling property use via affidavit or a mixed method. The paper linked above produced by the Task Force summarizes those efforts.</p>

Attachment A

<p>Kelly McNicholas Kury - County Commissioner, Home Rule County</p>	<p>Any change in calculations to the property tax rates may not result in any revenue increase for those jurisdictions that are not debruced/subject to 5.5% statutory limit.</p>
<p>Richard Elsner - Commissioner, Statutory County</p>	<p>Using either the Market approach or the residential real property approach is troublesome. This would require the Assessor to keep two sets of values because the type of property would not be known until the owner submitted the affidavit. This would probably require additional staff in the assessor's office and the counties that have not removed their TABOR restrictions would not be able to recover the costs.</p>
<p>Phil Horwitz - Tax Law Practitioner</p>	<p>The Colorado Constitution (Article X, Section 3(1)(a)) limits the application of the income approach to non-residential real property. It prohibits its use in valuing residential real property. However, that Constitutional provision generally requires that all property be valued at "actual value".</p> <p>To the degree that the Constitution limits the use of the income approach to properties classified as residential real property, that limitation restricts the use of an accepted valuation approach in arriving at actual value.</p> <p>The proposed language (currently drafted as 39-1-103(10.8)(b)) requiring the use of the market approach for properties classified as short-term-rental appears to conflict with the Constitutional requirement of valuation at actual value, since the property is now classified as non-residential real property.</p> <p>In addition, assessors should be granted maximum flexibility in arriving at actual value, since that flexibility is most likely to result in actual value. Thus, the limitation to the market approach should be minimized.</p>

Bill D: Tax Policy Analysis by the Legislative Branch

Task Force Member	Comment
Task Force Consensus comment	<p>It is gratifying to see the role of the task force extended. We have been the beneficiaries of and grateful for the contributions from various executive branch and legislative resources. If future work follows the same path as our work to date, the task force would greatly benefit from some dedicated research and writing time from the legislative staff services offices. We know this is not feasible at this time under existing resources, but the ability to produce work solely with volunteer time is inconsistent and may not be sufficient for a quality product over the long term.</p> <p>Additionally, the time frame in which the task force has to complete its work could be better harmonized with the requests from the oversight committee and the work of other standing or interim committees or task forces.</p> <p>The chance to discuss what might be possible with the bill's sponsors would be welcome.</p>

Bill E: Senior Housing Income Tax Credit

Task Force Member	Comment
<p>Brendon Reese – Colorado Department of Revenue (CDOR)</p>	<p><u>Consider requiring counties or the Property Tax Administrator to notify taxpayers that they are not eligible for the credit.</u></p> <p>This credit had a high rate of adjustment by the Department. Through early October (i.e., before the extension deadline), the Department processed approximately 103,000 claims through individual income tax returns. Of those, the Department denied approximately 21,000 claims or just over 20%.</p> <p>So far, 300 taxpayers responded to notices adjusting or disallowing the credit. Some of those cases are still being reviewed. Generally two common issues were found to have led to the rejection. In some cases, the taxpayer was not aware they received the senior property tax exemption because they applied for the exemption several years prior to 2022 and were not required to reapply each year.</p> <p>In 79 cases, the Department reviewed the property tax records and confirmed that the taxpayer had not received the senior property tax exemption. The Department used the data supplied by the Property Tax Administrator pursuant to section 39-3-207(7) (“eligible exemption database”) to vet tax credit claims on an automated basis. The automated rejection resulted from an error in this database.</p> <p><i>Consequences:</i> These erroneous claims and erroneous rejections had a workload impact on the Department and created a negative experience for taxpayers. Moreover, the Department could only review and resolve rejections that were protested. There were likely some taxpayers rejected in error who did not protest. Because there was not a clear mechanism for correcting the eligible exemption database, these errors may occur again when the credit is reinstated.</p> <p><i>Suggestion:</i> Require counties or the Property Tax Administrator to notify taxpayers that they are not eligible for the credit. Such notice could reduce erroneous claims by reminding taxpayers that they are still receiving the senior property tax exemption. It could also allow taxpayers who received the notice, but did not receive the exemption, to address the error with the county or the Property Tax Administrator prior to claiming the credit and reduce erroneous rejections.</p>

<p>Brendon Reese – CDOR</p>	<p><u>Clarify whether taxpayers may retroactively opt-out of the senior property tax exemption.</u></p> <p><i>Issue:</i> In some cases, taxpayers were frustrated because the value of the income tax credit was greater than the value of the senior property tax exemption. Taxpayers in some counties were able to retroactively opt-out of the senior property tax exemption to claim the credit. Other counties did not permit such a change.</p> <p><i>Consequences:</i> Taxpayers received different treatment depending upon the county where they lived.</p> <p><i>Suggestion:</i> Clarify that determining whether the taxpayer has not claimed the senior property tax exemption be completed as of a date certain to prevent retroactive changes and to give taxpayers clear direction on when they must act. Alternatively, provide a process (and a deadline) for retroactively disclaiming the senior property tax exemption so that the process is applied uniformly among the counties.</p>
<p>Brendon Reese - CDOR</p>	<p><u>Consider prorating the credit in the case of part-year residents.</u></p> <p><i>Issue:</i> The credit is allowed to resident individuals and was not prorated in the case of part-year residents.</p> <p><i>Consequences:</i> Part-year residents who met the other qualifications for the credit received the same amount of credit as full-year residents.</p> <p><i>Suggestion:</i> Specify that part-year residents are required to prorate the credit in accordance with the part-year apportionment ratio in section 39-22-110(1). See, e.g. section 39-22-123.5(5).</p>
<p>Brendon Reese - CDOR</p>	<p><u>Clarify the amount of the credit for joint PTC claimants.</u></p> <p><i>Issue:</i> Like the 2022 credit, the 2024 credit is allowed to taxpayers who qualify for a property tax, rent, and heat rebate without being subject to the phaseout. Page 6, lines 14 through 19, largely duplicate the existing language in section 39-22-544(4)(c). However, for 2024, the credit is doubled in the case of joint filers who are both qualifying seniors.</p> <p><i>Consequences:</i> There may be confusion about the amount allowed for joint PTC applicants.</p> <p><i>Suggestion:</i> For the avoidance of doubt, consider clarifying that in the case of joint applicants, the full credit amount depends upon whether both applicants are qualifying seniors.</p>

Attachment A

Brendon Reese - CDOR	<p><u>Make a conforming amendment to subsection (6).</u></p> <p><i>Issue:</i> Section 1 of the bill amends section 39-3-207 by adding a new subsection (8). It requires the Property Tax Administrator to provide the Department with data regarding senior property tax exemption claimants. Section 39-22-544(6) requires a conforming amendment to refer to subsection (8), and to permit the use of this data to confirm that the taxpayer meets the requirements of subsection (3)(b)(II)(C).</p>
Brendon Reese - CDOR	<p><u>Consider a safety clause.</u></p> <p><i>Issue:</i> The credit is allowed for tax year 2024, for which the Department will begin form design and programming in the spring of 2024. The bill uses an act subject to petition effective date.</p> <p><i>Consequences:</i> The Department will be uncertain as to whether to include the credit until the referendum period expires.</p> <p><i>Suggestion:</i> Consider a safety clause instead.</p>