

CHAPTER 347

TAXATION

HOUSE BILL 02-1265

BY REPRESENTATIVE(S) White, Alexander, Cadman, Crane, Dean, Fairbank, Fritz, Harvey, Hefley, Jahn, Jameson, Miller, Paschall, Rhodes, Rippey, Scott, Spradley, and Williams T.;
also SENATOR(S) Matsunaka, Evans, Fitz-Gerald, Lamborn, Pascoe, and Taylor.

AN ACT

CONCERNING CLARIFICATION OF THE PROPERTY TAX STATUS OF CERTAIN RESIDENTIAL REAL PROPERTY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-1-102 (5.5), Colorado Revised Statutes, is amended to read:

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(5.5) (a) "Hotels and motels" means ~~establishments which are primarily engaged in providing~~ IMPROVEMENTS AND THE LAND ASSOCIATED WITH SUCH IMPROVEMENTS THAT ARE USED BY A BUSINESS ESTABLISHMENT PRIMARILY TO PROVIDE lodging, camping, or personal care or health ~~care~~ facilities TO THE GENERAL PUBLIC and ~~which~~ THAT are predominantly used on an overnight or weekly basis; EXCEPT THAT "HOTELS AND MOTELS" DOES NOT INCLUDE:

(I) A RESIDENTIAL UNIT, EXCEPT FOR A RESIDENTIAL UNIT THAT IS A HOTEL UNIT;

(II) A RESIDENTIAL UNIT THAT WOULD OTHERWISE BE CLASSIFIED AS A HOTEL UNIT IF THE RESIDENTIAL UNIT IS HELD AS INVENTORY BY A DEVELOPER PRIMARILY FOR SALE TO CUSTOMERS IN THE ORDINARY COURSE OF THE DEVELOPER'S TRADE OR BUSINESS, IS MARKETED FOR SALE BY THE DEVELOPER, AND EITHER HAS BEEN HELD BY THE DEVELOPER FOR LESS THAN TWO YEARS SINCE THE CERTIFICATE OF OCCUPANCY FOR THE RESIDENTIAL UNIT HAS BEEN ISSUED OR IS NOT DEPRECIATED UNDER THE INTERNAL REVENUE CODE, AS DEFINED IN SECTION 39-22-103 (5.3), WHILE OWNED BY THE DEVELOPER;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(III) A RESIDENTIAL UNIT THAT WOULD OTHERWISE BE CLASSIFIED AS A HOTEL UNIT IF THE RESIDENTIAL UNIT HAS BEEN ACQUIRED BY A LENDER OR AN OWNERS' ASSOCIATION THROUGH FORECLOSURE, A DEED IN LIEU OF FORECLOSURE, OR A SIMILAR TRANSACTION, IS MARKETED FOR SALE BY THE LENDER OR OWNERS' ASSOCIATION AND IS NOT DEPRECIATED UNDER THE INTERNAL REVENUE CODE, AS DEFINED IN SECTION 39-22-103 (5.3), WHILE OWNED BY THE LENDER OR OWNERS' ASSOCIATION; OR

(IV) A RESIDENTIAL IMPROVEMENT IF A PORTION OF THE RESIDENTIAL IMPROVEMENT IS OCCUPIED BY ITS OWNER OR BY ONE OR MORE LESSEES OF THE OWNER AS A PRIMARY RESIDENCE AND A PORTION OF THE RESIDENTIAL IMPROVEMENT IS OFFERED TO THE GENERAL PUBLIC FOR ACCOMMODATIONS AS A BED AND BREAKFAST OR A SIMILAR OPERATION. THE ACTUAL VALUE AND VALUATION FOR ASSESSMENT OF SUCH A RESIDENTIAL IMPROVEMENT SHALL BE DETERMINED AS PROVIDED IN SECTION 39-1-103 (9) (a).

(b) IF ANY TIME SHARE ESTATE, TIME SHARE USE PERIOD, UNDIVIDED INTEREST, OR OTHER PARTIAL OWNERSHIP INTEREST IN ANY HOTEL UNIT IS OWNED BY ANY NON-HOTEL UNIT OWNER, THEN, UNLESS A DECLARATION OR OTHER EXPRESS AGREEMENT BINDING ON THE NON-HOTEL UNIT OWNERS AND THE HOTEL UNIT OWNERS PROVIDES OTHERWISE:

(I) THE HOTEL UNIT OWNERS SHALL PAY THE TAXES ON THE HOTEL UNIT NOT REQUIRED TO BE PAID BY THE NON-HOTEL UNIT OWNERS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) EACH NON-HOTEL UNIT OWNER SHALL PAY THAT PORTION OF THE TAXES ON THE HOTEL UNIT EQUAL TO THE NON-HOTEL UNIT OWNER'S OWNERSHIP OR USAGE PERCENTAGE OF THE HOTEL UNIT MULTIPLIED BY THE PROPERTY TAX THAT WOULD HAVE BEEN LEVIED ON THE HOTEL UNIT IF THE ACTUAL VALUE AND VALUATION FOR ASSESSMENT OF THE HOTEL UNIT HAD BEEN DETERMINED AS IF THE HOTEL UNIT WAS RESIDENTIAL REAL PROPERTY.

(III) FOR PURPOSES OF DETERMINING THE AMOUNT DUE FROM ANY HOTEL UNIT OWNER OR NON-HOTEL UNIT OWNER PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE ASSESSOR SHALL, UPON THE REQUEST OF ANY HOTEL UNIT OWNER OR NON-HOTEL UNIT OWNER, CALCULATE THE PROPERTY TAX THAT WOULD HAVE BEEN LEVIED ON THE HOTEL UNIT IF THE ACTUAL VALUE AND VALUATION FOR ASSESSMENT OF THE HOTEL UNIT HAD BEEN DETERMINED AS IF THE HOTEL UNIT WERE RESIDENTIAL REAL PROPERTY. A HOTEL UNIT OWNER OR NON-HOTEL UNIT OWNER MAY PETITION THE COUNTY BOARD OF EQUALIZATION FOR REVIEW OF THE ASSESSOR'S CALCULATION PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 39-10-114. ANY APPEAL FROM THE DECISION OF THE COUNTY BOARD SHALL BE GOVERNED BY SECTION 39-10-114.5.

(c) AS USED IN THIS SUBSECTION (5.5):

(I) "CONDOMINIUM UNIT" MEANS A UNIT, AS DEFINED IN SECTION 38-33.3-103 (30), C.R.S., AND ALSO INCLUDES A TIME SHARE UNIT.

(II) "HOTEL UNIT OWNERS" MEANS ANY PERSON OR MEMBER OF A GROUP OF

RELATED PERSONS WHOSE OWNERSHIP AND USE OF A RESIDENTIAL UNIT CAUSE THE RESIDENTIAL UNIT TO BE CLASSIFIED AS A HOTEL UNIT.

(III) "HOTEL UNITS" MEANS MORE THAN FOUR RESIDENTIAL UNIT OWNERSHIP EQUIVALENTS IN A PROJECT THAT ARE OWNED, IN WHOLE OR IN PART, DIRECTLY, OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIATE ENTITIES, BY ONE PERSON OR BY A GROUP OF RELATED PERSONS IF THE PERSON OR GROUP OF RELATED PERSONS USES THE RESIDENTIAL UNITS OR PARTS THEREOF IN CONNECTION WITH A BUSINESS ESTABLISHMENT PRIMARILY TO PROVIDE LODGING, CAMPING, OR PERSONAL CARE OR HEALTH FACILITIES TO THE GENERAL PUBLIC PREDOMINANTLY ON AN OVERNIGHT OR WEEKLY BASIS. "HOTEL UNIT" MEANS ANY RESIDENTIAL UNIT INCLUDED IN HOTEL UNITS. FOR PURPOSES OF THIS SUBPARAGRAPH (III):

(A) "CONTROL" MEANS THE POWER TO DIRECT THE BUSINESS OR AFFAIRS OF AN ENTITY THROUGH DIRECT OR INDIRECT OWNERSHIP OF STOCK, PARTNERSHIP INTERESTS, MEMBERSHIP INTERESTS, OR OTHER FORMS OF BENEFICIAL INTERESTS.

(B) "RELATED PERSONS" MEANS INDIVIDUALS WHO ARE MEMBERS OF THE SAME FAMILY, INCLUDING ONLY SPOUSES AND MINOR CHILDREN, OR PERSONS WHO CONTROL, ARE CONTROLLED BY, OR ARE UNDER COMMON CONTROL WITH EACH OTHER. PERSONS ARE NOT RELATED PERSONS SOLELY BECAUSE THEY ENGAGE A COMMON AGENT TO MANAGE OR RENT THEIR RESIDENTIAL UNITS, THEY ARE MEMBERS OF AN OWNERS' ASSOCIATION OR SIMILAR GROUP, THEY ENTER INTO A TENANCY IN COMMON OR A SIMILAR AGREEMENT WITH RESPECT TO UNDIVIDED INTERESTS IN A RESIDENTIAL UNIT, OR ANY COMBINATION OF THE FOREGOING.

(IV) "PROJECT" MEANS ONE OR MORE IMPROVEMENTS THAT CONTAIN RESIDENTIAL UNITS IF THE BOUNDARIES OF THE RESIDENTIAL UNITS ARE DESCRIBED IN OR DETERMINED BY THE SAME DECLARATION, AS DEFINED IN SECTION 38-33.3-103 (13), C.R.S.

(V) "RESIDENTIAL UNIT" MEANS A CONDOMINIUM UNIT, A SINGLE FAMILY RESIDENCE, OR A TOWNHOME.

(VI) "NON-HOTEL UNIT OWNER" MEANS ANY OWNER OF A TIME SHARE ESTATE, TIME SHARE USE PERIOD, UNDIVIDED INTEREST, OR OTHER PARTIAL OWNERSHIP INTEREST IN ANY HOTEL UNIT WHO IS NOT A HOTEL UNIT OWNER WITH RESPECT TO THE HOTEL UNIT.

(VII) "RESIDENTIAL UNIT OWNERSHIP EQUIVALENT" MEANS:

(A) IN THE CASE OF TIME SHARE UNITS, TIME SHARE INTERESTS OR TIME SHARE USE PERIODS IN ONE OR MORE TIME SHARE UNITS THAT IN THE AGGREGATE ENTITLE THE OWNER OF SUCH TIME SHARE INTERESTS OR TIME SHARE USE PERIODS TO THREE HUNDRED SIXTY-FIVE DAYS OF USE IN ANY CALENDAR YEAR OR THREE HUNDRED SIXTY-SIX DAYS OF USE IN ANY CALENDAR YEAR THAT IS A LEAP YEAR; AND

(B) IN THE CASE OF RESIDENTIAL UNITS OTHER THAN TIME SHARE UNITS, UNDIVIDED INTERESTS OR OTHER OWNERSHIP INTERESTS IN ONE OR MORE SUCH RESIDENTIAL UNITS THAT TOTAL ONE HUNDRED PERCENT. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), ANY UNDIVIDED INTEREST OR OTHER OWNERSHIP INTEREST

NOT STATED IN TERMS OF A PERCENTAGE OF TOTAL OWNERSHIP SHALL BE CONVERTED TO A PERCENTAGE OF TOTAL OWNERSHIP BASED ON THE RIGHTS ACCORDED TO THE HOLDER OF THE UNDIVIDED INTEREST OR OTHER OWNERSHIP INTEREST.

(VIII) "TIME SHARE UNIT" MEANS A CONDOMINIUM UNIT THAT IS DIVIDED INTO TIME SHARE ESTATES AS DEFINED IN SECTION 38-33-110 (5), C.R.S., OR THAT IS SUBJECT TO A TIME SHARE USE AS DEFINED IN SECTION 12-61-401 (4), C.R.S.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to the taxation of residential units for property tax years commencing on or after January 1, 2002.

Approved: June 7, 2002