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ANNUAL SEMINAR ON MUNICIPAL LAW

2022

The Deep End: Issues in Municipal Taxation

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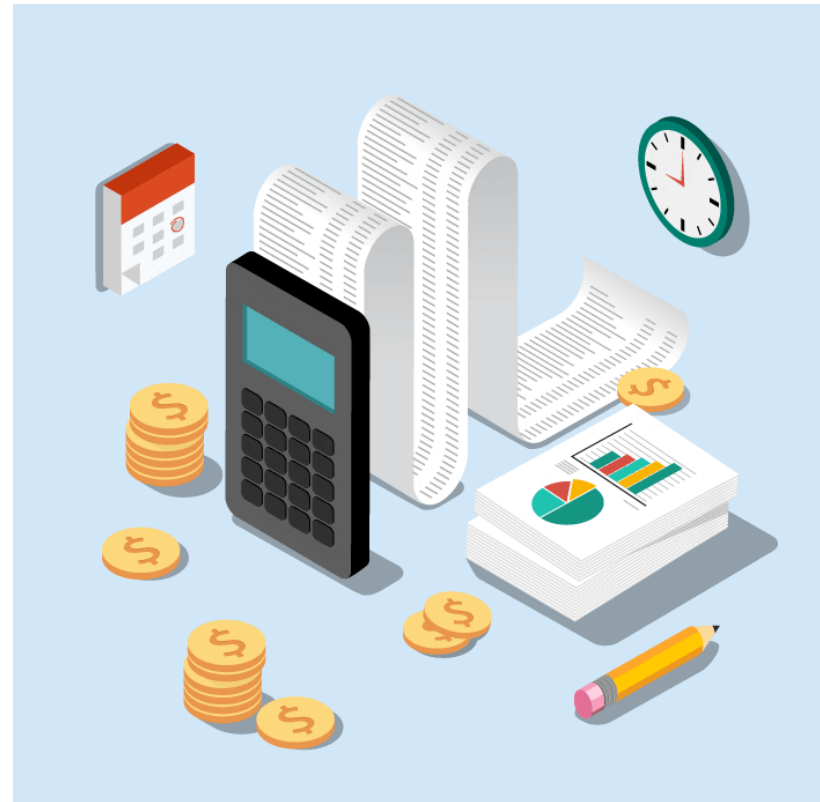


**What is this
presentation
about?**

Review of Sales and Use Taxes and Their Importance

Taxing Taxes?!

- Retail delivery fee (SB 21-270)
- Bag fee (HB 21-1162)
- Other state and local fees



Finding a Path Forward



CML SALES TAX
SIMPLIFICATION COMMITTEE



MODEL ORDINANCE



CHANGING THE NARRATIVE



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Ordinance Language

CML Model Ordinance

The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.

Aurora and Denver's Ordinance

Any government fees imposed directly on the purchaser and required to be held in trust by the imposing government and separately stated on the invoice provided to the purchaser at the time of sale.



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What's the Next “Problem”?



Building Permits

Use Taxes

Issued for new construction, additions, renovations

Ensure taxes go to the jurisdiction where the project is located to help fund additional services related to construction growth

Purpose is to record plans, codes, inspections, and fees related to a project in that jurisdiction

Calculated based on estimated total project cost

Most include use tax on building materials

Contractor shows proof of use tax payment to get sales tax exemption



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Lawsuits Happening Now!

metroPCS®



Cities v. State: HB 22-1024

wayfair®



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HB 22-1024 Litigation

HB 22-1024 purports to prohibit home rule municipalities from taxing sales of construction and building materials to contractors and subcontractors for use in building or repairing a public school.



HB 22-1024 Litigation: Claims and Defenses

- The CITIES seek a declaratory judgment that HB 22-1024 infringes on the home rule taxing authority granted in the Colorado Constitution, Art. XX, § 6.
- The STATE is arguing HB 22-1024 is constitutional due to its responsibility to provide for the establishment and maintenance of a thorough and uniform system of free public schools under the Colorado Constitution, Art. IX, § 2.



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HB 22-1024 Litigation: Procedural Posture

- June 30, 2022: Cities filed Complaint and Motion for Expedited Hearing
- July 26, 2022: State filed MTD
- August 9, 2022: Hearing
- August 10, 2022: HB 22-1024 effective
- August 19, 2022: State filed Answer and Counterclaim
- August 24, 2022: Cities file a Motion for Partial Judgment on the Pleadings
- September 9, 2022: Cities Answer the Counterclaims



MetroPCS v. Lakewood

- 1996 Ordinance
 - Amended utility B&O fee to call it a tax
 - Expanded reach to non-utilities
 - Expanded activities that would require payment of the tax
- 2015 Ordinance
 - Further expanded the activities that would subject a provider to pay tax



* This information is based on allegations in the Complaint

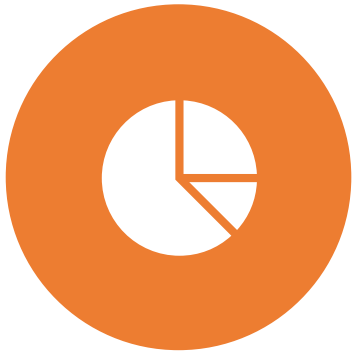
Wayfair v. Lakewood



WAYFAIR CLAIMS:

- Undue burden on interstate commerce
- Discrimination against interstate commerce
- Not “engaged in business” in Lakewood
- No substantial nexus pre-June 21, 2018

What's Next?



2022 BALLOT
MEASURES




TAXATION OF
LODGING



TAXATION OF DIGITAL
GOODS



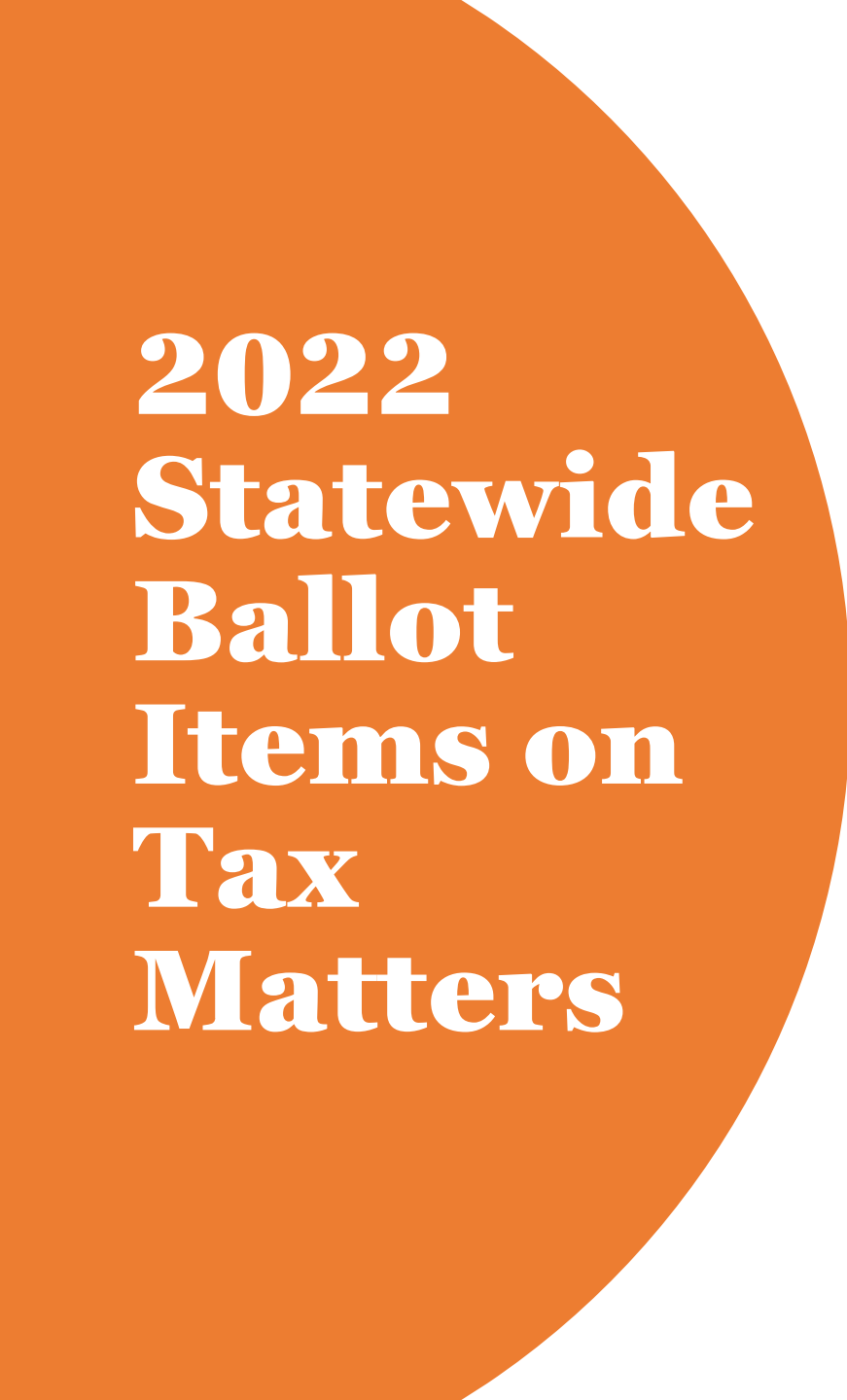
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2022 Statewide Ballot Items on Tax Matters

Homestead Exemption Amendment
Amendment E

**Dedicate Revenues to Fund Housing
Projects Initiative**
Proposition 123

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2022 Statewide Ballot Items on Tax Matters

State Income Tax Rate Reduction Initiative
Proposition 121

**Reduce Income Tax Deduction Amounts to
Fund the Healthy School Meals for All
Program**

Proposition FF

**Include Income Tax Effects in Initiative
Ballot Language Measure**

Proposition GG



Lodging Taxes and Short-Term Rentals

Potential lawsuit?

Definitions from Economic Nexus Ordinance

“Marketplace” means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

“Marketplace Facilitator” (A) Means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration. . .the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;
- (2) . . . [Communicates] the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) . . .[C]ollects payment from the purchaser on behalf of the seller

. . . .

Should this be applied to lodging?

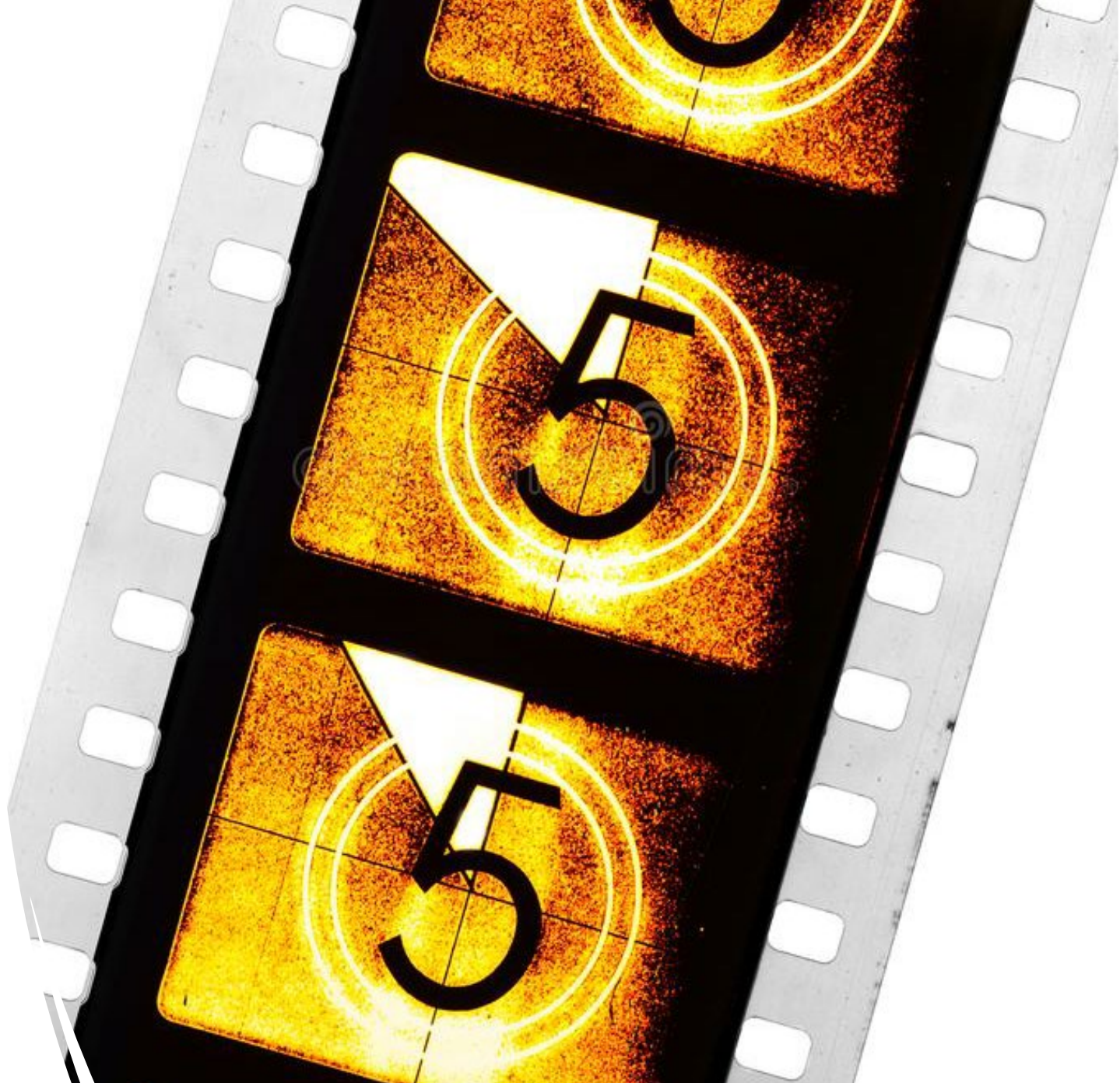
Some municipalities
desire to have
marketplace facilitator
added to lodging taxes
when their code
separates lodging
taxes from sales taxes.

Digital Goods and Taxation

- *AMC v. Aurora* refresh
- HB 21-1312
 - Codified digital goods into the state tax code
- Reviewing tax codes



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Questions?

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Thank You!

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