

COLORADO MUNICIPAL LEAGUE
ANNUAL SEMINAR ON MUNICIPAL LAW

Survey of Local Financing Tools

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COLORADO
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Introduction

Inflation. Tariffs. Uncertain federal and state grant funding. Growing demand for services. Housing shortages...

What is a municipal attorney to do?

City of Steamboat Springs Initiatives

- Vacant Homes Tax
- Lift Tax
- Lodging/Short Term Rental Tax

Home Rule Powers

Home rule municipalities have same powers as the legislature on local matters

- “Home rule cities are not limited to legislative grants of authority and at the very least have every power which the legislature may delegate to cities of lesser class.” *City and County of Denver v. Duffy Storage and Moving Co.* 450 P.2d 339 (1969).
- “Home-rule cities . . . are constitutionally granted every power possessed by the General Assembly as to local and municipal matters.” *Veterans of Foreign Wars v. City of Steamboat Springs*, 575 P.2d 835 (1978).

Home Rule Powers cont'd

Municipal tax policy is a local and municipal matter if the purpose of the tax is to raise revenue

- Taxes adopted to raise revenue with which to conduct the affairs and render the services performed by a municipality relate to matters of local or municipal concern. *Berman v City and County of Denver*, 400 P.2d 434 (1965).

Tax policy may not be of solely local concern if there is a regulatory purpose

- Taxes adopted with a regulatory purpose. *State Farm v Temple*, 491 P.25 1371 (1971) (regulation of insurance industry).
- Distinction between regulation and taxation. *Post v City of Grand Junction*, 195 P.25 958 (1948) (regulation of intoxicating liquors).

State Constitutional Limitations

Real Estate Transfer Tax: Article X, Sec. 20 (8)(a) “New or increased transfer tax rates on real property are prohibited.”

Income Tax: Article X, Sec. 17 “The general assembly may levy income taxes . . .”

- “Exclusive and non-delegable authority . . .” *City and County of Denver v. Duffy Storage and Moving Co.*, 450 P.2d 339 (1969).
- Article X, Sec. 20(8)(a) “No new . . . local district income tax shall be imposed.”

Uniformity: Article X, Sec. 3 “All taxes shall be uniform upon each of the classes of real and personal property . . .”

- “[R]efers solely to a direct or ad valorem tax upon property.” *Deluxe Theaters, Inc. v City of Englewood*, 596 P.2d 771 (1979).

General constitutional considerations—Eq Protection, Due Process, Commerce, etc.

Why Not Property Tax and Sales/Use Tax?

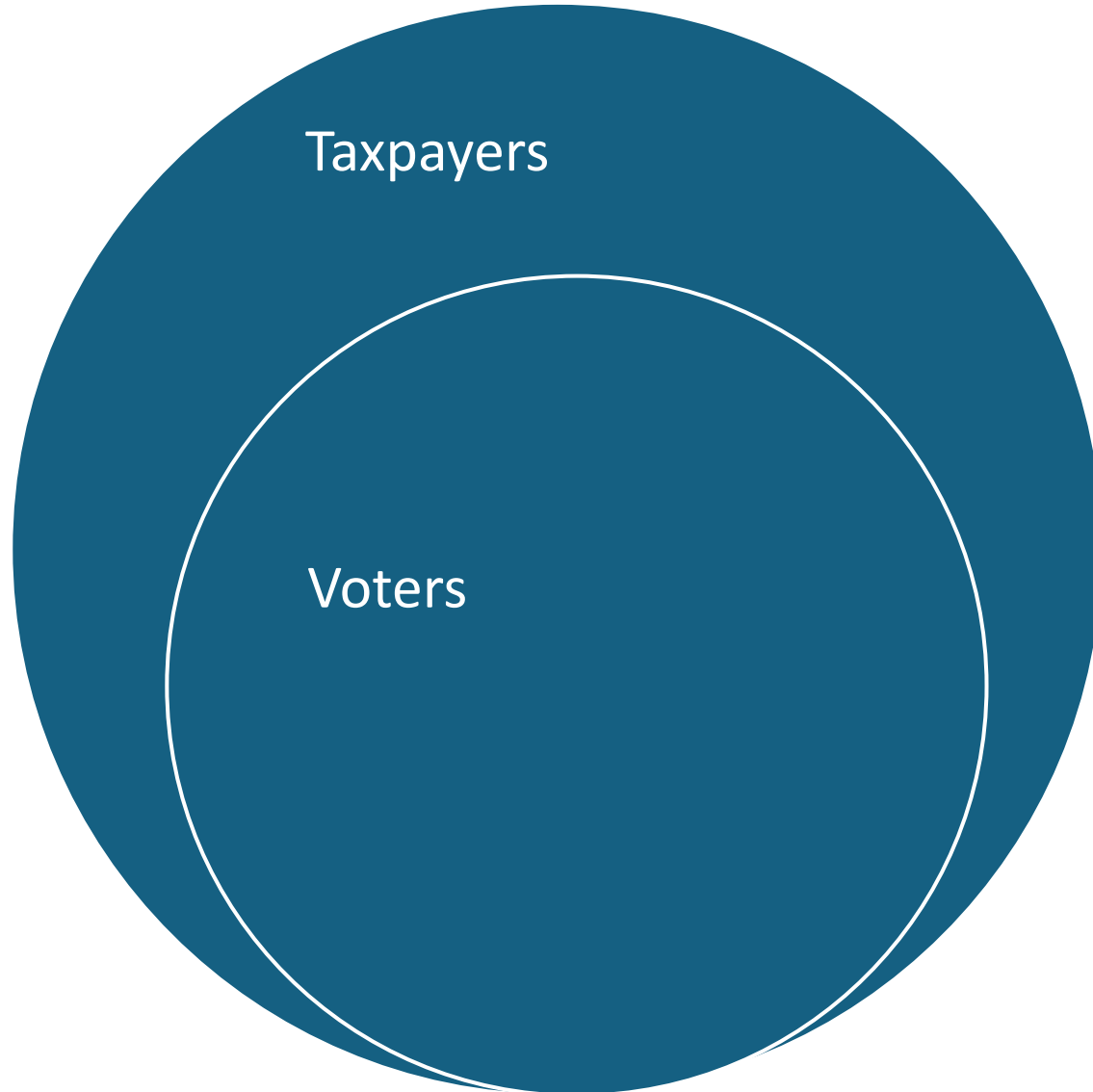
Regressive

- Some ability to structure a less restrictive sales tax, e.g. rebates, tax base
- Property tax is one size fits all

Difficult to tailor to specific impacts, demands for City services, or regulatory policies

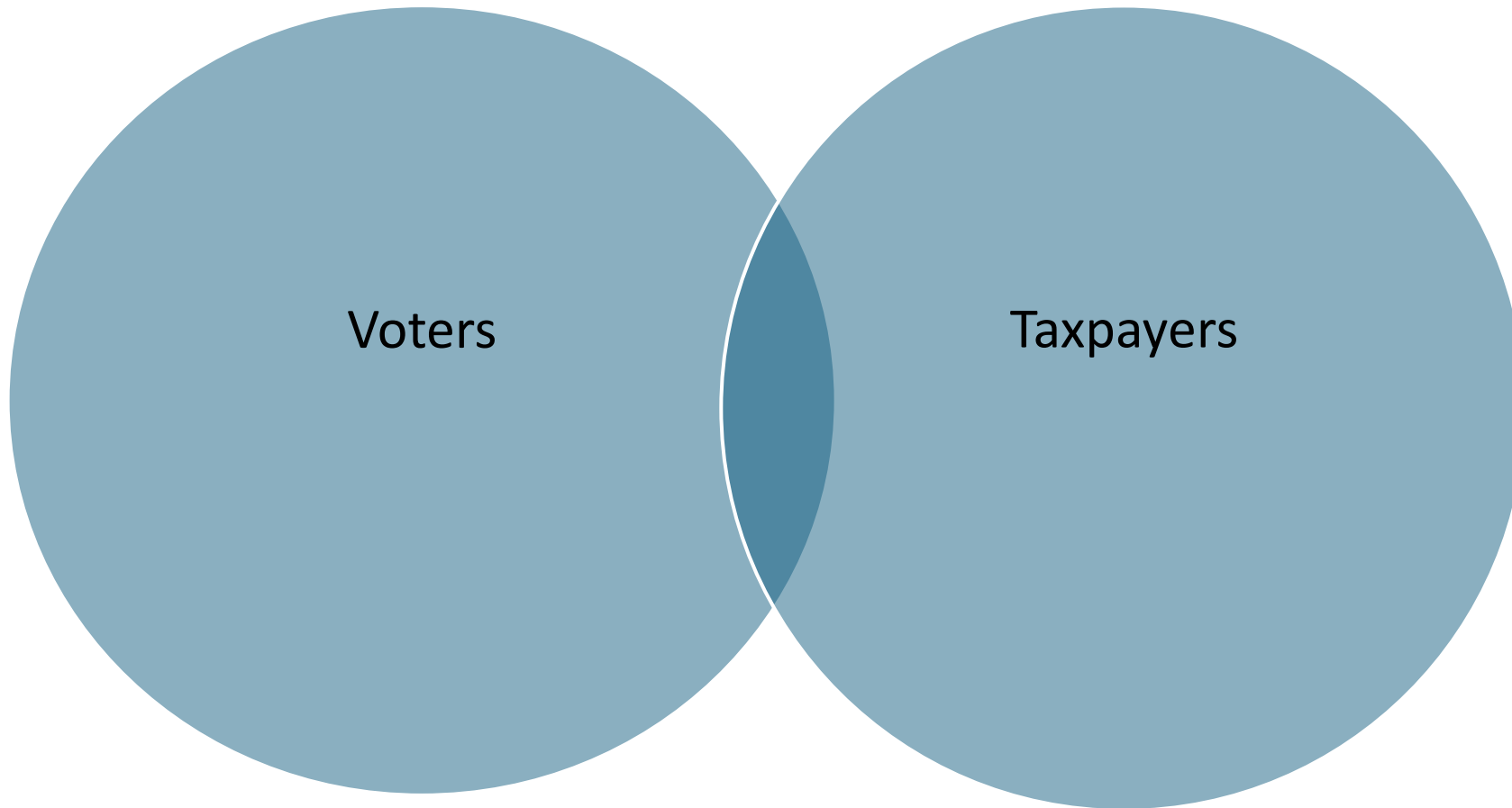
- Revenues may be restricted, but these taxes have a broad base
- Broad base nevertheless can miss activity that generates substantial demands for municipal services, e.g. transit services and ski areas
- Property tax assessment rules may create undesirable incentives vis a vis housing policy

Electoral considerations



**“Don’t tax you, don’t tax me, tax the fellow
behind the tree.”**

-Sen. Russell Long



Lodging Tax/Short-Term Rental Tax

Lodging/Accommodations tax

- 1986 Steamboat Springs tax operates as an additional sales tax on lodging
- SB 24-024; CRS 29-2-116; CRS 39-26-801
- *Busse v City of Golden*, 73 P.3d 660 (2003) (expenditure of voter restricted revenues may not materially depart from the voter approved purpose).

Short term rental tax

- 2023 Steamboat Springs 9% tax on short term lodging in dwelling units
- Revenue restricted to increasing stock of affordable/attainable housing

Tax policy and market distortion

- Residential vs. commercial real property tax assessment rates
- Proposed reclassification of short-term rental properties

Vacancy/Empty Homes Tax

Proposed Steamboat Springs tax on residential property that is occupied for fewer than 183 days/calendar year

- Offset costs of services, \$3,100 per unit
- California and Canada taxes intended to discourage part time use, return units to long term occupancy
- *Debbane v City and County of San Francisco*, A172067, 1st Appellate Dist. Ct of Appeals.

Implementation

- Each property owner files a return
- Audit records of daily activity

Vacancy/Empty Homes Tax cont'd

Objections

- Taxation without representation. Ownership of property does not create fundamental right to political participation. *Millis v Bd of Cty Com'rs of Larimer County*, 626 P.2d 652 (1981).
- Short-term rental restrictions and double taxation
- Administrative burden

Legislation

- SB 24-174; CRS 24-32-3706(2)(b) DOLA long term affordability strategies
- CAST proposals

Lift Tax

City of Steamboat Springs proposed tax at \$6 per skier/rider day

- Offset demand for transit services based on internal data and USFS Master Development Plan
- *VR CPC Holdings v Park City*, 2025 UT App 130, 2025 WL 2472622.
- Tax not referred; negotiated 20-year contribution agreement

Local conditions critical to tax structure

- Distribution of ticket window purchases of day passes vs. online purchases of multi-resort passes vs. local season passes

Incidence of the tax

- Business and occupation tax imposed on lift operator vs. sales/admissions tax imposed on each transaction

Statutory Authorities

1. Method of Entity Formation

2. Makeup of Governing Body

3. Examples of Power and Authority

- Condemn property (C.R.S. § 38-1-202)
- Levy taxes (and if so what kind)
- Issue tax exempt bonds
- Other sources of revenue (private donations, grants, pledged revenues)
- Ownership of property and facilities

Urban Renewal Authorities

Colo. Rev. Stat. § 31-25-101, et seq.

1. Method of Entity Formation (§ 31-25-104)

- Petition by 25 electors; council resolution
- Governing body shall hold hearing on determination of blight

2. Makeup of Governing Body (§ 31-25-104)

3. Power and Authority (§ 31-25-105; § 31-25-105.5)

- Ownership of property and facilities
- Condemn Property
- Sources of Revenue (TIF on property & sales tax, GO bonds, special obligation bonds)
- Cooperation by public bodies with urban renewal authorities (§ 31-25-112)
- 25-year timeline and *Aurora v. Scott*, 410 P.3d 720 (Court App. 2017)
- No power to levy taxes or special assessments

Downtown Development Authorities

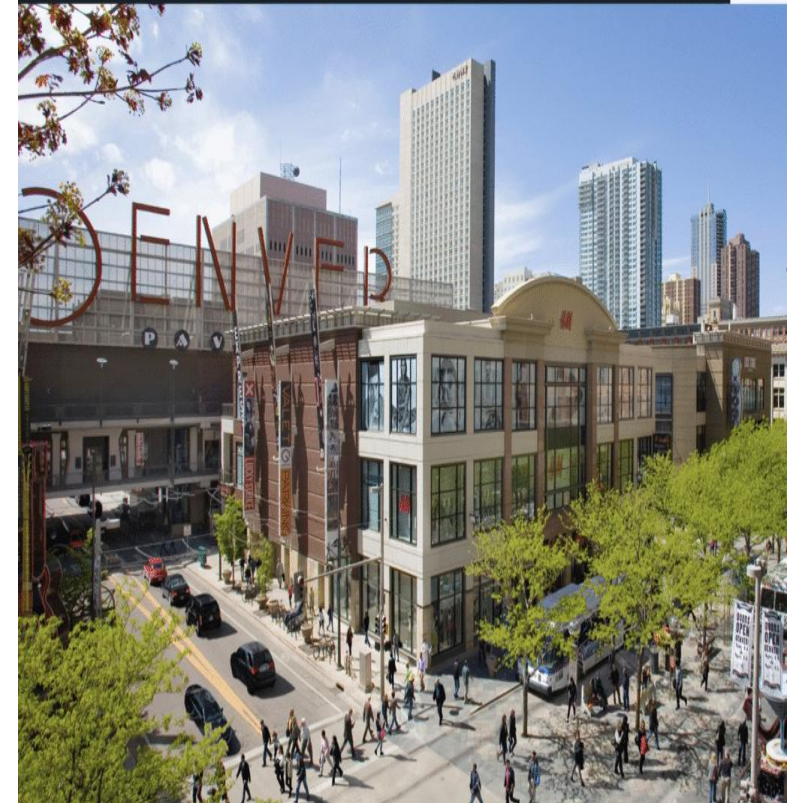
Colo. Rev. Stat. §§ 31-25-801 – 822

1. **Formation:** City Council adoption of an ordinance submitted at a regular or special election (§31-25-804)
2. **Power and Authority**
 - Can't Condemn Property
 - Can't levy sales tax
 - Ownership of property and facilities
3. **Sources of Revenue**
 - Can use sales and property tax for TIF
 - Up to 5Mill property tax for operations
 - GO and revenue bonds, but no special assessment bonds
 - Impose fees, rates, tolls, rents, charges, grants, contributions, loans, income or other revenues imposed under 808

Denver Downtown Development Authority

Denver Ballot Issue 6A authorizing \$570M in city bonds

- Denver Union Station Plan set to expire
- Adopted new plan and new 30-year TIF Term
- Issued \$570M in bonds
- Amended plan to include more property
- Applicants petition for inclusion; agreement for loan repayment
- \$45Million for DDA Board to acquire Pavilions



General Improvement Districts

Colo. Rev. Stat. §§ 31-25-601 – 633

1. **Formation:** Petition signed by not less than 30 percent or two hundred electors of the proposed district (whichever is less); Council hearing and approval (with limited exception for all taxable property owners)
2. **Powers**
 - Capital improvements, maintenance, public facilities; includes both commercial and residential property
 - Condemn property
3. **Sources of Revenue**
 - Can't levy sales tax
 - Levy property tax
 - GO bonds, special assessment bonds, assess costs

Special Improvement District

Colo. Rev. Stat. § 31-25-501, et seq

1. **Formation:** Need petition from property owners who will bear at least 50 percent of the costs; approval of ordinance by governing body; city council governance.
2. **Powers:**
 - Can't operate facilities
 - Can't Condemn property
 - For the purpose of constructing, installing, or acquiring any public improvement so long as the municipality that forms the district is authorized to provide such improvement under the municipality's home rule charter or ordinance passed pursuant to such charter, if any, or the laws of this state.
3. **Sources of Revenue:**
 - Can't levy taxes
 - Issue Revenue and Special Assessment bonds but not GO Bonds

Housing Authorities

Colo. Rev. Stat. §§ 29-1-201 – 207; § 29-4-101, et seq.

Multi-jurisdictional Housing Authorities

- Any combination of home rule or statutory cities, towns, counties, and cities and counties of this state may, **by contract**, establish a housing authority.
- Power to levy ad valorem, sales, or use, taxes.

Local Housing Authorities

- Expansive scope of authority, including authority to fund, construct, own, manage, or make loans for affordable housing
- *Targets low income



Regional Transportation Authorities

Colo. Rev. Stat. §43-4-601

1. **Entity Formation:** Negotiation of a statutorily prescribed IGA and approval by voters of formation of entity (RTA becomes a “body corporate and political subdivision of the state”)
2. **Powers:** refer tax measures, hire staff, eminent domain, own property and operate facilities (§ 43-4-604)
3. **Revenue Sources** (§ 43-4-605 (1)(j)(I))
 - Sales and Use Tax “not to exceed two percent upon every transaction or other incident with respect to which a sales or use tax is levied by the state.” Property Tax “to impose a uniform mill levy of up to five mills on all taxable property within the territory of the authority.”
 - Visitor Benefit Tax
 - Fees, fares, pledged revenues, donations, grants



IGA Authorities

The Constitution and state statute authorizes “political subdivisions to establish, by contract, a separate legal entity to provide any function, service, or facility lawfully authorized to each.” See Colo. Const. Art. XIV, 18 (2)(a), (b) and Colo. Rev. Stat. §29-1-203(4).

Impact Fees

- Purpose: "to fund expenditures by such local government on capital facilities needed to serve new development." § 29-20-104.5(1), C.R.S. (added 2001).
- Codifies and shapes earlier cases. (*Krupp, Bloom*).
- Must be:
 - (a) Legislatively adopted;
 - (b) Generally applicable to a broad class of property; and
 - (c) Intended to defray the projected impacts on capital facilities caused by proposed development.
- Various limitations and qualifications. "Reasonably related" and "roughly proportional", but no "mathematical exactitude." And don't forget takings/*Sheetz*.
- No double dipping.
- *Not* a regulatory linkage fee.
- Examples: park impact fee, public buildings impact fee, affordable housing impact fee, transportation impact fee.

Statutory Deficits of Authority

- No general excise tax authority
 - No lodging tax authority. **Workaround:** Local marketing districts!
 - No short-term rental tax authority
 - **Workaround:** Occupation tax authority! *Town of Eagle v. Scheibe*, 10 P.3d 648 (Colo. 2000).
 - **Workaround:** Regulatory linkage fees! *Colorado Union of Taxpayers Found. v. City of Aspen*, 2018 CO 36; see also *Am. Car Rental Ass'n v. Humphreys*, Civil Action No. 1:24-cv-02450-DDD-KAS (D. Colo. May 29, 2025); *Americans for Prosperity v. State of Colo.*, 2025 COA 46.

Statutory Deficits of Authority, cont'd

- Can't sell land used for a government purpose without a vote of the people. § 31-15-713(1)(a), C.R.S.
 - **Workaround:** Long-term leases!
- Can't use lease-purchase agreements (or, therefore, certificates of participation) to finance residential housing. § 31-15-801, C.R.S.
 - **Workaround:** IGAs with housing authorities!

Current Proposals: Enabling Legislation

- Empty homes taxes
- Real estate transfer fees
- Short term rental taxes
- Excise taxes generally
- Fixes on COPs and land sales

New Financing Entities and Incentives

- SB25-006 Investment Authority of State Treasurer for Affordable Housing
- SB25-081 Concerning Public Financing/Building Urgent Infrastructure and Leveraging Dollars Authority

Thank You!

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