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# HB 22-1024

## SALES & USE TAX

### PREEMPTION OF HOME RULE TAXING AUTHORITY

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#### HB 22-1024 – YOUR OPPOSITION AND “NO” VOTE RESPECTFULLY REQUESTED

In Colorado, voters enshrined the principle of “home rule” into the Colorado Constitution to ensure self-governance and freedom from state government interference on matters of purely local and municipal concern. High on the list of those matters is the right of home rule municipalities and their respective citizens to set their own sales and use tax base.

HB 1024 purports to upend this right in a manner that is unconstitutional and backed by settled law by attempting to force home rule municipalities to follow the exemption the State of Colorado gives for public school construction use tax collected from contractors. (This exemption is one of the nearly 80 enshrined in the state’s tax base.)

**Whether one agrees that this or any other tax should be collected by home rule municipalities is a matter solely for the citizens of home rule municipalities and not the General Assembly.** The Colorado Supreme Court has affirmed this through three seminal decisions:

- 1) *Berman v. Denver*, 400 P.2d 434, 437 (1965) (holding that the home rule right to levy a tax to raise revenue for city operations is a constitutional authority, not a statutory one): “The provisions of the sales and use tax ordinances adopted by the City relate to matters of ‘local or municipal’ concern within the meaning of Article XX, Sec. 6. They were adopted to raise revenue with which to conduct the affairs and render the services performed by the City.”
- 2) *Security Life and Acceptance Company v. Temple*, 492 P.2d 63, 64 (1972): “The activity of the entity taxed is not controlling when testing whether Denver is acting in a purely local and municipal matter. The point is that the power to levy sales and use taxes for the support of the local home rule government is ‘essential \* \* \* to the full exercise’ of the right of self-government granted to such cities under Article XX, section 6. That the power to levy and collect within Denver excise taxes such as the sales tax is purely ‘local and municipal’ concern’ was delineated clearly in

Berman v. Denver...The state, even when acting under its regulatory powers, cannot prohibit home rule cities from exercising a power essential to their existence (local taxation).”

- 3) *Winslow Const. Co. v. City & Cty. of Denver*, 960 P.2d 685, 694–95 (1998): Upheld *Berman* and *Security Life*. “*Berman* and *Security Life* stand for the proposition that the imposition of local sales and use taxes is a matter of local concern; we will not overrule them.”

These three cases clearly establish that the venue for this discussion is with the city councils and voters in the municipalities that tax this or any other item that one may not like. It is of no relevance that public schools and public school funding matters may be of statewide concern. *Security Life* clearly established that **the nature of the entity taxed is not relevant to answering the local versus statewide concern question** when the insurance company claimed exemption from Denver tax, citing statewide concern because regulation of insurance companies by the state is a matter of statewide concern.

The Colorado Municipal League, on behalf of the 70 of 104 home rule municipalities that self-collect their sales and use tax, respectfully requests you honor established constitutional principles and jurisprudence with your opposition to this legislation. Passage of this legislation can only lead to expensive, taxpayer-funded litigation for home rule municipalities to have to defend for yet another time that which has been firmly established. This seems an utterly avoidable conflict, especially when no issues have yet been raised by construction contractors, from whom the tax is collected, nor any school districts.