

LAW SCHOOL FOR NON-LAWYERS: INTRODUCTION TO THE TABOR AMENDMENT

CML PRESENTATION

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Socratic Method

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What's in a Name?

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Taxpayers
Bill
Of
Rights

Bill of Rights

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Founding Fathers

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Doug Bruce

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Bruce in the News

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THE DENVER POST
Douglas Bruce, wanted on Denver assault warrant, claims innocence

THE DENVER POST
SUMMER BUT STILL-CAPTIVE DOUGLAS BRUCE RELEASED FROM DENVER JAIL

THE DENVER POST
DOUGLAS BRUCE, TABOR FOUNDER, ACCUSED OF VIOLATING 6 PAROLE CONDITIONS

THE DENVER POST
Douglas Bruce convicted of tax evasion, faces prison time

THE DENVER POST
Bruce Kicks Photographer, Takes Oath


George W. Bush

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George H.W. Bush

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Bill Clinton

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Ross Perot

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1992 Colorado Election Results

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	■ 40% William Clinton (D)
	■ 36% George HW Bush (R)
	 23% Ross Perot (I)

“District”

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“District” = State or any local government, excluding enterprises.

District

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1. District.
2. Not a District.
3. An Enterprise.

Enterprise

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Enterprise = Government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of its annual revenue in grants from all Colorado State and local governments.

What is a Government-Owned Business?

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- Not defined in TABOR.
- Case law provides that entity with authorization to tax is not a business.
- Courts have focused on whether entity is operated on a fee-for-service basis.
- Ownership of assets and control of organization are important.

Authorization to Issue its Own Bonds

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- Historically municipalities have issued bonds—not their component units.
- Typically municipalities will take some sort of action to create an enterprise and provide authority to issue bonds.
- Enterprise board is usually the same as the city council.

Receipt of Under 10% of Annual Revenue in Grants from all Colorado State and Local Governments

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- Annual test.
- Grants not defined in TABOR.
- Legislature has defined for some purposes.
- “Direct cash subsidy or other direct contribution. Of money...which is not required to be repaid.
- Does not include indirect benefits, charges for goods or services.
- Federal funds generally considered to be cash.

“Inflation”

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“Inflation” = The percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder.

Local Growth

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Local Growth = Value of added taxable real property through construction or annexation-loss of taxable real property through destruction or deannexation.

Adjustments To Revenue Base

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- Qualification and disqualification as an enterprise.
- Debt service changes.
- Reduction if local subsidies for State mandates.

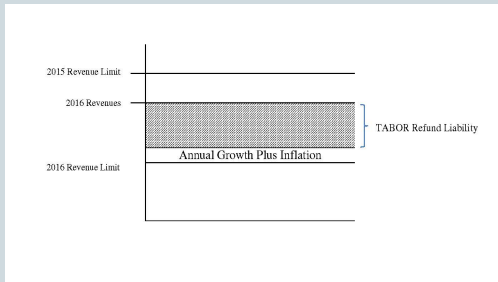
The Ratchet Down Effect

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Decline in annual revenue drops the revenue limit for the following year and rebound is limited by annual growth and inflation.

Ratchet Down Graphic

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Four Types of Refunds

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1. Excess revenue over revenue limit.
2. Revenue that exceeds amount of new tax revenue estimated in an election notice.
3. Revenue required to be refunded pursuant to TABOR litigation.
4. Emergency tax revenues not spent on the emergency.

Different Refund Strategies (“Any Reasonable Method”)

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- Adopt temporary reduction in tax rate.
- Give a property tax credit.
- Calculate on per capita basis and let taxpayers opt to claim.
- Provide free municipal services.
- Disburse checks to citizens.
- Utility bill credits.

De-Brucing

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- What it means and what it doesn’t mean.
- Not a complete opt out from TABOR.
- A form of voter approval to keep and spend revenue in excess of TABOR limitations.

Types of Voter Approved Revenue Changes

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1. Stand alone broad form or dollar specific.
2. Tax or debt related broad form or dollar specific.
3. Time limited or open ended.
4. Revenue source specific or from any lawful source.
5. Earmarked or kept for any purpose.

Timing of Elections

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Voting on “ballot issues” limited to:

1. State general election (November of even-numbered years).
2. Biennial local district election date.
3. First Tuesday in November of odd-numbered years.

Ballot Clutter, Confusion and Consolidated Elections

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Coordinated Elections

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- County clerk primarily responsible for conducting.
- Governed by an intergovernmental agreement.
- Mail ballot elections are not subject to mandate.
- IGA finalized 60 days prior to election.
- Home rule municipalities can choose whether to coordinate.

Ballot Issue Notices

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- “Substantial compliance” required with very complex notice requirements.
- Some requirements only apply to certain types of ballot issues.
- 500 word pro and con summaries.

Debt Before TABOR

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- Full faith and credit.
- Water project exception.
- Special fund exception.
- Annual appropriation exception.
- Refinancing exception.
- Conduit bond exception.

Multiple Year Fiscal Year Obligation

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- Broader than debt.
- Includes revenue bonds.
- Annual appropriation does not necessarily insulate from TABOR application.

Fundamental Nature or Transaction Must Be Analyzed

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- Issuance of negotiable instrument.
- Do bond purchasers have claim on unspent proceeds.
- Credit enhancement.
- Open ended pledge of repayment.
- Sheer size of transaction.
- Recourse to tangible asset.

Exception to Voter Approval Requirement

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- Pledge of cash reserves.
- Enterprises.
- Refinancing at a lower interest rate.
- Conduit bonds.

Voter Approval for Six Categories of Taxes

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1. Any new tax.
2. Tax rate increase.
3. Mill levy above prior year.
4. Valuation for assessment increase for a property class.
5. Extension of an expiring tax.
6. Tax policy change directly causing a net tax revenue gain.

Supreme Court's View of Four Common Types of Revenue Measures

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1. Ad valorem taxes – taxes upon assessed value of property that defray general expenses of government.
2. Excise taxes – paid as prerequisite for performance of act or event on which tax is based, also defrays general expenses of government.
3. Special assessments – charges on particular property for special benefits conferred.
4. Fees – charges imposed upon particular property for purpose of defraying cost of particular government service.

What an Emergency is Not

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“Emergency” excludes economic conditions, revenue shortfalls, or direct salary or fringe benefit increases.

Emergency Reserve – 3% of Fiscal Year Spending

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- Don't over-pledge or identify TABOR reserve.
- No limitation as to source of revenues.
- Double duty reserves not prohibited.
- Must be depleted before imposing emergency tax.
- Replenishment requirements not clear.
- Some entities have used letters of credit or real property holdings instead of cash.
- Many municipalities already had reserves in excess of 3%.

Emergency Taxes

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- TABOR allows for imposition of emergency tax without voter approval.
- Two-thirds majority vote of governing body required to declare emergency and impose tax.
- Tax imposed only until the next election.
- Strict refund for any amounts not spent on emergency.
- Should be cautious in invoking

Interpreting TABOR

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- Self-executing.
- Supersedes conflicting laws.
- Preferred interpretation shall reasonably restrain most growth of government.
- Not a fundamental right.
- Substantial compliance.
- Deference to legislative and administrative interpretations.
- Douglas Bruce's post-election statements accorded no deference.

Doug Bruce

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TABOR Enforcement

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- Essentially deputizes individual citizens to enforce.
- Successful plaintiffs allowed costs and reasonable attorney fees.
- Moneys collected, kept or spent illegally refunded with 10% annual interest penalty.
- Four year statute of limitations.