

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

**MEMORANDUM**

**TO:** Colorado Lodging & Resort Alliance  
**FROM:** Martha M. Tierney  
**DATE:** February 6, 2024  
**RE:** TABOR Implications of Proposed New Tax per SB24-033

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**Question Presented:** Would legislation creating a new tax on short-term rental properties trigger TABOR and require voter approval?

**Short Answer:** Yes. The proposed legislation likely constitutes a new tax and a tax policy change requiring voter approval per TABOR.

**ANALYSIS**

In 1992, Coloradans adopted TABOR, which limits the power of the state, its subdivisions, and its districts to levy taxes or create debt. Colo. Const. art. X, §20. TABOR requires advance voter approval before a district may collect "any new tax, tax rate increase, . . . or a tax policy change directly causing a net tax revenue gain to any district." Colo. Const. art. X, § 20(4)(a).

Short-term rentals in Colorado are defined in the introduced bill, SB24-033, as an improvement that is designed and used as a place of residency by a person, a family, or families, and that is not a primary residence but that is also leased or available to be leased for one or more short-term stays of less than 30 days in exchange for monetary payment.<sup>1</sup> Short-term rentals are currently not assessed for tax purposes as lodging properties, but rather as residential properties subject to residential property taxes.<sup>2</sup> Short-term rentals have proliferated over the past decade, and there are now thousands of short-term rentals in Colorado.

Over the 2023 interim period, the Legislative Oversight Committee Concerning Tax Policy proposed Bill 6, "Concerning the Property Tax Treatment of Real Property That Is Used to

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<sup>1</sup> See [2024a\\_033\\_01.pdf \(colorado.gov\)](#), 3-4.

<sup>2</sup> While some municipalities have adopted short-term rental licensing and taxing ordinances, there is no state law specifically applicable to short-term rental taxation.

Provide Lodging.”<sup>3</sup> Bill 6 proposed to treat short-term rental units, as defined in the proposed legislation, as lodging property for property tax purposes. SB24-033 has now been introduced and is the successor to Bill 6.

Adding short-term rental units to the lodging classification per SB24-033 will constitute a new tax and a tax policy change, requiring voter approval under TABOR. The fiscal note for Bill 6 indicated that it will generate over 370 million dollars in new property tax revenue.<sup>4</sup>

The Colorado Supreme Court has provided guidance on what constitutes a new tax or a tax policy change. "A legislative change causing only an incidental and de minimis revenue increase" is "not a 'new tax' or a 'tax policy change.'" *See TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, ¶¶ 25-26 (Annual tax revenue increases of \$2.7 million for one district and \$250 thousand for another are incidental and de minimis.). And a tax policy change “suggests a significant change.” *Id.* at ¶ 24. Additionally, “ministerial, nondiscretionary adjustments to taxation schemes authorized by statutes enacted before TABOR remain valid, even without voter approval.” *Griswold v. Nat'l Fedn. of Indep. Bus.*, 2019 CO 79, ¶ 37.

Based on the state’s fiscal analysis, SB24-033 will implement a significant change on the taxes assessed on short-term rentals, and a resulting boost to tax revenue. This type of revenue increase exceeds an incidental or de minimis revenue increase. *See TABOR Found. V. Reg'l Transp. Dist.*, ¶¶ 25-26. The new proposal to tax short-term rental properties also does not predate TABOR, is not a ministerial, nondiscretionary adjustment to the current scheme, and thus would not be exempt from the voter approval requirement on that basis. *See Griswold v. Nat'l Fedn. of Indep. Bus.*, ¶ 37.

If there is a compromise proposal to create a new tax classification that will be applicable specifically to short-term rental properties, this tax will also likely constitute a new tax and a tax policy change under TABOR. While the revenue increases resulting from a compromise tax proposal specific to short-term rentals are presently unknown, based on the state’s fiscal analysis for Bill 6, any new proposal that would create a new property tax classification for short-term rentals would surely result in a significant (not incidental or de minimis) increase in tax revenue.<sup>5</sup> The new proposal also does not predate TABOR, and thus would not be exempt from the voter approval requirement on that basis. This type of change to Colorado’s tax law, with its attendant new revenue, will require voter approval.

In sum, the new tax and significant tax policy change is a proposal that will trigger TABOR and require voter approval.

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<sup>3</sup>See [bill\\_6\\_24-0388.pdf \(colorado.gov\)](#).

<sup>4</sup>See [Fiscal Note Bill 6 - Lodging Property Tax Treatment \(colorado.gov\)](#).

<sup>5</sup>See [Fiscal Note Bill 6 - Lodging Property Tax Treatment \(colorado.gov\)](#), which may reflect elevated revenues that will be lower if short-term rentals have their own tax rate that sits between the lodging and residential rates, but even so, the proposal is likely to generate hundreds of millions of dollars in local revenue and save the state many millions of dollars in school finance obligations.