



Major Property Tax Relief Passed by the Colorado Legislature, Now It's Up to the Voters

BROWNSTEIN CLIENT ALERT, MAY 9, 2023

In the waning hours of the legislative session, the Colorado General Assembly passed a bill that would ask voters to approve a 10-year property tax relief plan to combat skyrocketing home values and backfill lost revenue for local governments—not entirely a new dilemma for state lawmakers. As discussed in our [prior client alert](#) on Oct. 13, 2021, in the final days of the 2021 legislative session, the Colorado Legislature passed SB21-293, intending to temporarily cut property taxes in a last-minute bipartisan attempt to address anticipated increases in property taxes due to the 2020 repeal of the Gallagher Amendment. **Because Proposition 120 did not pass in November 2021, the tax rate reductions from SB21-293 would have expired after tax year 2023. So, in 2022, the Colorado legislature passed SB22-238, which further reduced property taxes for tax year 2023 and extended additional reductions into tax year 2024.**

Now, in passing [SB23-303](#) on the last day of the 2023 session, the legislature has again tried to address property tax spikes looming on the horizon. In summary, SB23-303 will

- reduce assessed valuations for many classes of real property, including certain new subclasses of property,
- extend these reductions for the next 10 years,
- allow the state to backfill the lost revenues to local governments by increasing the cap on tax revenues the state may retain (by reducing TABOR refunds to taxpayers), and
- allocate up to \$20M in funds towards rental assistance (via an amendment added May 7).

However, before this bill can be fully enacted into law, portions of it must go to the voters in November 2023.

Nov. 7, 2023 Ballot Measure

The Taxpayer's Bill of Rights ("TABOR") requires the state to refer a ballot issue to the November 2023 election to reduce property taxes for homes and businesses and allow the state to retain excess tax revenues to backfill the associated losses in local tax revenues. This will be titled Proposition HH. If it fails, then the property tax reductions and local government backfill cash fund set forth in SB23-303, and outlined below, will be repealed and will not go into effect.

On Saturday, May 6, 2023 (two days before the end of the legislative session), Democrats introduced [HB23-1311](#), intended to flatten TABOR refunds due to Coloradans next year. Specifically, refunds would be \$661 per person, with joint filers receiving double that. Colorado's current TABOR refund system has six tiers based on income: Coloradans earning under \$50,000 would be refunded an estimated \$454, those earning \$50,000 - \$100,000 would have an estimated refund of \$606, and the refunds increase from there with those making more than \$279,000 receiving an estimated refund of \$1,434. This has been tied into Proposition HH, with the intention of incentivizing voters to support the TABOR refund flattening and property tax reductions while also approving the retention of revenues for the local government backfill.

Property Tax Reductions Set Forth in SB23-303 vs. Current Tax Rates

SB23-303's primary effect on property owners is that assessed valuation calculations will be further reduced from what they are under SB22-238 passed last year, and the reductions will last for 10 years (rather than expiring after next year).

This table compares the state's current property tax law, as enacted under SB22-238, versus SB23-303 (assuming Proposition HH is approved in November 2023).

Current Law - SB22-238

SB23-303
(w/ ballot measure approved)

LODGING:

2023 tax year: 27.9% (no \$30K reduction)

2024 tax year and all subsequent years: 29%

LODGING:

2023 tax year: 27.85% of the actual property value, **minus** the lesser of \$30,000 or the amount that causes the assessed value to be \$1,000 (the "30K reduction")

2024 to 2026 tax years: 27.85% (no \$30K reduction)

2027 to 2028 tax years: 27.65%

2029 to 2030 tax years: 26.9%

2031 to 2032 tax years:

a) 25.9%, **if** for the 2031 tax year, the average increase in assessed value for property within the 32 counties with the smallest increase in total valuation is $\geq 3.7\%$ ("Sufficient AV Growth")

b) 26.9%, **if** for the 2031 tax year, the average increase in assessed value for property within the 32 counties with the smallest increase in total valuation is $< 3.7\%$ ("Insufficient AV Growth")

All tax years following 2032: 29%

AGRICULTURE and RENEWABLE ENERGY-PRODUCING LAND:

2023 and 2024 tax years: 26.4% of the actual property value, **minus** the \$30K reduction

All tax years following 2024: 29%

AGRICULTURAL, RENEWABLE ENERGY PRODUCING LAND, and NEW RENEWABLE ENERGY AGRICULTURAL LAND:**Agricultural or Renewable Energy:**

2023 to 2030 tax years: 26.4% (no \$30K reduction)

2031 to 2032 tax years:

a) 25.9%, **if** for the 2031 tax year, there is Sufficient AV Growth

b) 26.4%, **if** for the 2031 tax year, there is Insufficient AV Growth

All tax years following 2032: 29%

Renewable Energy Agricultural Land:

2023 tax year: 26.4% (no \$30K reduction)

2024 to 2032 tax years: 21.9%

All tax years following 2032: 29%

IMPROVED COMMERCIAL SUBCLASS:

2023 tax year: 27.9% of the actual property value, **minus** the \$30K reduction.

2024 tax year and all subsequent years: 29%

IMPROVED COMMERCIAL SUBCLASS:

2023 tax year: 27.85% of the actual property value, **minus** the \$30K reduction

2024 to 2026 tax years: 27.85% (no \$30K reduction)

2027 to 2028 tax years: 27.65%

2029 to 2030 tax years: 26.9%

2031 to 2031 tax years:

a) 25.9%, **if** for the 2031 tax year, there is Sufficient AV Growth

b) 26.9%, **if** for the 2031 tax year, there is Insufficient AV Growth

All tax years following 2032: 29%

ALL OTHER NONRESIDENTIAL (that is not commercial, lodging, agriculture or renewable energy):

2023 tax year: 27.9% (no \$30K reduction)

2024 tax year and all subsequent years: 29%

ALL OTHER NONRESIDENTIAL (that is not commercial, lodging, agriculture, renewable energy, renewable energy agriculture, or is not under a vacant land subclass):

2023 to 2026 tax year: 27.85% (no \$30K reduction)

2027 to 2028 tax years: 27.65%

2029 to 2030 tax years: 26.9%

2031 to 2031 tax years:

a) 25.9%, **if** for the 2031 tax year, there is Sufficient AV Growth

b) 26.9%, **if** for the 2031 tax year, there is Insufficient AV Growth

All tax years following 2032: 29%

MULTI-FAMILY:

2023 tax year: 6.765% of the actual property value, **minus** the lesser of \$15,000 or the amount that reduces the assessed value to \$1,000 (the "\$15K reduction").

2024 tax year: 6.8%

All years following 2024 tax year: 7.15%

MULTI-FAMILY:

2023 tax year: 6.7% of the actual property value, **minus** the lesser of \$50,000 or the amount that reduces the assessed value to \$1,000 (the "\$50K reduction").

2024 to 2032 tax year: 6.7% of the actual property value, **minus** the lesser of \$40,000 or the amount that reduces the assessed value to \$1,000 (the "\$40K reduction").

All tax years following 2032: 7.15%

SINGLE FAMILY:

2023 tax year: 6.765% of the actual property value, **minus** the \$15K reduction

2024 tax year: To be temporarily established by the property tax administrator on or before March 21, 2024, the percentage necessary to generate an aggregate reduction of local government property tax revenue of \$700M in tax years 2023 and 2024

All years following 2024 tax year: 7.15%

SINGLE FAMILY:

2023 tax year: 6.7% of the actual property value, **minus** the \$50K reduction

2024 to 2024 tax years: 6.7% of the actual property value, **minus** the \$40K reduction

2025 to 2032 tax years: There is a split in Single Family tax rates between Primary Residence, Qualified-Senior Primary Residence and Non-primary Residence as follows:

- Primary Residence (including Multi-Family Primary Residence*): 6.7% of the actual property value, **minus** the \$40K reduction.

- Qualified-Senior Prim. Residence: 6.7% of the actual property value, **minus** the lesser of \$140,000 or the amount that reduces the assessed value to \$1,000.

- Non-Primary Residence (All other residential that is not Multi-Family, Primary Residence or Qualified-Sr Prim Residence): 6.7% (no reduction)

All tax years following 2032: 7.15%

*Definition of Multi-Family Primary Residence is discussed below.

New Subclasses of Real Property

Aside from reducing assessed property values for certain classes of property, SB23-303 also creates some new subclasses of real property, which include three subclasses of single-family residential, a Multi-Family Primary Residence subclass and a Renewable Energy Agricultural Land subclass.

For tax years beginning in 2025, SB23-303 divides the single-family residential class into three subclasses: Primary Residence, Qualified-Senior Primary Residence, and all other residential that is not multi-family, primary residence or qualified-senior primary residence ("*Non-Primary Residence*"). The Primary Residence subclass include those residences that are "Owner-Occupied," which includes property lived in by the owner of record, their spouse or civil union partner if they are living with the owner of record or the surviving spouse of the owner of record if they lived with the owner at the time of their death, or any of the foregoing individuals who are not the owner of record, but

only because the property has been transferred to a trust or other legal entity solely for estate planning purposes, as well as certain exceptions for individuals who are confined to a hospital, nursing home or assisted living facility. And in an amendment made in the final hours of last night's session, the legislature added a clause that if an individual is an Owner-Occupier of one property and an owner of record on another property with a family member that isn't the individual's spouse, then the other family member may be an Owner-Occupier of the other property. This change essentially allows for someone to purchase a house for someone else in their family and that family member's home will still qualify as a Primary Residence. Additionally, property that might otherwise be classified as multi-family residential property that contains a unit that qualifies as a primary residence is classified as Multi-Family Primary Residence.

The assessed value calculation for all residential property classes is the same for tax years 2023 to 2024 at 6.7%, with a \$50,000 reduction in 2023 and a \$40,000 reduction in 2024. However, beginning in 2025, the Non-Primary Residence owners will see a difference in their assessed values because they will no longer get the \$40,000 reduction that all other residential subclasses will continue to see (or \$140,000 reduction with respect to Qualified-Senior Primary Residences).

Note that for a property to qualify as a Primary Residence, Multi-Family Primary Residence or Qualified-Senior Primary Residence on or after Jan. 1, 2025, the owner-occupier must complete and file an application with the tax assessor's office no later than March 15 of the year for which classification is sought. Also, married couples or civil union partners who own more than one residence are not permitted to claim separate residences as "primary" and are deemed to occupy the same primary residence for classification purposes. If Proposition HH passes this upcoming November, we anticipate the state will undertake an education campaign around how and when to file this owner-occupier declaration form. In particular, SB23-303 creates a working group to make recommendations by Jan. 1, 2024, on ways to streamline and improve the designation of the primary residence.

Renewable Energy Agricultural Property is a new subclass of Agricultural Property and is land that is classified as agricultural land that contains a renewable energy facility, if the land was classified by the assessor as agricultural land at the time the facility was constructed. This classification applies for the tax year that the property is still used for agricultural purposes and to the portion of the land that is attributable to or used in conjunction with the renewable energy facility. If any portion of the land is used for nonagricultural commercial or nonagricultural residential purposes, that portion is valued according to its use. This new subclass of Renewable Energy Agricultural Property is beneficial to the landowner because it receives a significant reduction in its assessed value (21.9%, instead of 25.9%-26.4% applicable to either Agricultural Property or Renewable Energy Producing Land individually).

Backfill of Lost Property Taxes to Local Governments and Special Districts by the State:

Under current property tax law created by SB22-238, the state is required to reimburse local government entities—including water districts, fire districts, ambulance and hospital districts and school districts—for property tax revenue lost as a result of reductions in valuation, subject to a cap and a shorter duration. SB23-303 generates additional funds to reimburse local governments and special districts by dedicating a portion of the state TABOR surplus to the backfill and extending the backfill relief from 2024 through 2032 (however, for these future years local governmental entities that have an increase in real property total valuation of 20% or more will be ineligible for the backfill). With SB23-303 moving quickly, some counties and local governments have criticized this limit as arbitrary. The process local governments need to use to document and obtain the backfill remains somewhat unclear and will require working closely with each county treasurer.

The state will pay for this increased backfill obligation by creating a state public school fund and a local government backfill cash fund, specifically authorizing on Feb. 1, 2024, the movement of \$72 million from the general fund into the state public school fund and \$128 million from the general fund into the local government backfill cash fund. If the voters approve Proposition HH, the state will be authorized to retain and spend revenues up the Proposition HH cap, which is:

- for the 2023-24 fiscal year, an amount equal to the excess state revenues cap for the prior fiscal year, adjusted for inflation plus 1% and population changes.
- for the 2024-25 fiscal year and the fiscal years thereafter, an amount equal to the Proposition HH cap for the prior fiscal year, adjusted for inflation plus 1% and population changes.

This proposal would "de-Bruce" state revenue up to a new limit that adds 1% annually to the calculation. Prior to SB23-303, the state could only retain additional revenue in excess of the cap for the prior fiscal year adjusted for inflation and population changes. This change is expected to allow the state to retain approximately \$167 million in 2024, which will reduce the state TABOR surplus from an estimated \$2 billion to an estimated \$1.8 billion and reduce taxpayer refunds by \$46 in 2024.

Next Steps:

If Proposition HH passes in November 2023, SB23-303 will take effect on the date of the official declaration of the vote by the governor. If the ballot measure fails, portions of SB23-303 (including those related to all property tax reductions and the Proposition HH cap on funds the state may retain) are automatically repealed and will not take effect. If this occurs, the State's current property tax law under SB22-238 would apply.

THIS DOCUMENT IS INTENDED TO PROVIDE YOU WITH GENERAL INFORMATION REGARDING SB23-303. THE CONTENTS OF THIS DOCUMENT ARE NOT INTENDED TO PROVIDE SPECIFIC LEGAL ADVICE. IF YOU HAVE ANY QUESTIONS ABOUT THE CONTENTS OF THIS DOCUMENT OR IF YOU NEED LEGAL ADVICE AS TO AN ISSUE, PLEASE CONTACT THE ATTORNEYS LISTED OR YOUR REGULAR BROWNSTEIN HYATT FARBER SCHRECK, LLP ATTORNEY. THIS COMMUNICATION MAY BE CONSIDERED ADVERTISING IN SOME JURISDICTIONS. THE INFORMATION IN THIS ARTICLE IS ACCURATE AS OF THE PUBLICATION DATE. BECAUSE THE LAW IN THIS AREA IS CHANGING RAPIDLY, AND INSIGHTS ARE NOT AUTOMATICALLY UPDATED, CONTINUED ACCURACY CANNOT BE GUARANTEED.

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