2nd Draft

Amendment R
Exempt Possessory Interests in Real Property

Amendment R proposes amending the Colorado Constitution to:

- eliminate property taxes for individuals or businesses that use government-owned property for a private benefit worth $6,000 or less in market value.

Summary and Analysis

Property taxes and possessory interests. Property taxes are primarily based on the value of land, houses, other buildings, and business equipment. Individuals and businesses pay property taxes to various local governments, such as cities, counties, school districts, and special districts. Property taxes pay for a variety of local government services, including public education, police and fire services, roads and bridges, parks and recreation facilities, hospitals, and libraries.

When an individual or business uses government-owned land or equipment for private purposes, a possessory interest is created. Although government-owned property is exempt from taxes, the benefit that a business or individual obtains from using that land or equipment is not. For example, some ranchers lease land from the federal government for cattle grazing. Other businesses lease land to provide a recreational activity, such as skiing or river rafting, or are given a contract to provide a specific service on public land, such as operating a snack bar at a national park. Under current law, the value of a private benefit is considered a possessory interest and is subject to property taxes.

The market value of all possessory interests in Colorado is about $330 million, which is less than 0.1 percent of the total market value of all property in the state. At this value, possessory interests generate approximately $23 million in property taxes annually. There are about 220,000 possessory interests in the state, of which nearly 215,000 are leases of agricultural land. Although agricultural leases greatly outnumber the other types of possessory interests, they account for only 3 percent of the total value of all possessory interests in the state, averaging about $51 each.

How does Amendment R change the taxation of possessory interests? Starting in 2012, a possessory interest is exempt from property taxation if the market value of the interest is $6,000 or less. For example, most cattle grazing leases with the federal government have a market value below $6,000 and thus this private benefit would not be taxed. In contrast, the value of private benefits obtained by ski areas exceed the $6,000 threshold and will continue to be taxed at the full value. In budget year 2012-13, the measure is expected to reduce property taxes statewide by $160,000. Every two years, this threshold is increased to account for inflation.

Arguments For

1) Amendment R reduces the administrative burden of collecting a tax that in many cases costs more money to collect than it brings in to local governments. For example, an agricultural possessory interest with a market value of $51 would owe about $1 in property taxes, depending on local tax rates. The cost of administering this tax — mailing notices, maintaining tax rolls, and collecting and enforcing the tax — often exceeds this amount.

Arguments Against

1) Amendment R provides an unfair tax break for businesses and individuals who use government-owned land and puts a greater tax burden on others to pay for local government services. The state constitution requires that taxes be charged uniformly for all taxpayers. A small tax bill does not justify exempting a business or individual from paying the tax on the private benefit they enjoy on government land. Simple fairness demands that all businesses and individuals pay taxes, no matter how small.

Estimate of Fiscal Impact

State Expenditures. The amendment is expected to increase state expenditures for public schools by approximately $46,000 beginning in budget year 2012-13.

Local Government Impact. The amendment is expected to reduce property taxes for local governments by up to $160,000 per year, beginning in budget year 2012-13. Of this amount, property taxes for school districts are expected to decrease by approximately $46,000. In addition, minor cost savings may occur in some counties because of fewer property valuations.