



## **2024 Legislative Issue Form**

*To propose a CCI legislative issue, please complete this form.*

*Feel free to use more than one page and include any supplemental materials.*

**1.) Contact Information** (of person bringing forth issue):

- a. **Name:** Kathy Chandler-Henry
- b. **Title:** Board Chair
- c. **County:** Eagle County
- d. **Phone Number:** (970) 390-3104
- e. **E-Mail Address:** kathy.chandlerhenry@eaglecounty.us

**2.) Issue/Problem to be addressed** (What is the problem this legislation is seeking to solve?)

Excessive penalty interest for property tax refunds.

**3.) Background on this Issue/Problem** (How did this come to be? Why are you seeking a legislative remedy?)

Under the Colorado Constitution, real property taxes are calculated by applying the relevant assessment rate for the property type (e.g., residential, non-residential) to the actual value of the real property. Colo. Const. art. X, § 3(1)(a); *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 203 (Colo. 2005). The assessment rate (i.e., the percentage ratio to be applied to its actual value) depends on the property's assigned classification. Colo. Const. art. X, § 3(1); *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo.1988). County assessors determine actual value of real property on a biennial basis, and assign classification annually based on the use, condition and status of the property as of January 1 of each year. C.R.S. §§ 39-1-104(1); 39-1-105. Property owners can challenge the county assessor's determination of actual value and/or classification through either the "protest and adjustment" process, or through a request for "abatement and refund of taxes."

The protest and adjustment process allows a real property owner to file a protest with the assessor prior to the levy of taxes. C.R.S. § 39-5-122. The county assessor's decision can then be appealed to the county board of equalization. C.R.S. §§ 39-8-102; 39-8-106. Appeals from a county board of equalization's decision can be lodged for a trial *de novo* with the local district court or the state board of assessment appeals ("BAA"). C.R.S. §§ 39-8-108; 39-8-108.5. Decisions of a district court or the BAA may be subject to judicial review, and could ultimately be reviewed by the Colorado Supreme Court. C.R.S. § 38-8-108. Orders requiring the actual value to be reduced or classification to be changed result in a refund of taxes, "together with refund interest at the same rate as delinquent interest as specified in section 39-10-104.5." C.R.S. § 39-8-109. Such refund interest accrues from the date that taxes were paid. *Id.* The appellant and the county shall each be responsible for their respective costs. *Id.* Depending on the election of the board of county commissioners of each county, the protest and adjustment process begins either six or three months prior to the date that taxes become due and owing. *See*, C.R.S. §§ 39-5-122; 39-5-122.7. County officials are required to resolve appeals very quickly – the whole process is completed in approximately 6 weeks. However, there is no statutory time limit under which appeals to a district court or the BAA are resolved, and in many cases, such appeals remain pending for *years* after taxes are paid, and if a refund of taxes is ordered, all taxing entities are charged penalty interest in the amount of 1% per month, or 12% per year.

The abatement and refund of taxes process is the alternative approach to challenge the assessor's valuation for assessment of real property after taxes have been levied. C.R.S. §§ 39-1-113; 39-10-114. The board of county commissioners initially considers these petitions, with approval from the Colorado Property Tax Administrator ("PTA") being required for any refund exceeding \$10,000. *Id.* Property owners can challenge the decision of the board of county commissioners or the PTA at the BAA. The county has a statutory time limit in which to issue an order, but again, there is no time limit for the BAA to issue orders on appeals. If a refund is ordered, interest at the rate of 1% or 12% per year accrues from the date a complete abatement petition is filed or the date payment of taxes was received by the treasurer, whichever is later. *Id.* Decisions of the BAA are subject to

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**By Friday, July 7.**



judicial review and could ultimately be reviewed by the Supreme Court. Again, many cases remain pending for years.

In recent years, there has been an onslaught of challenges to valuation and classification principles mandated by the PTA on county assessors. The Assessor Reference Library published by the PTA (“ARL”) is binding on assessors but not courts. Thus, counties often find themselves in the position of holding a position that may later be overturned by the courts, with the local governments having no control but bearing an unreasonable risk.

It is beyond debate that the statutory rate of return of 12%/year exceeds anything that exists in the market. This lucrative rate of return on tax refunds is no secret to the tax agent industry in Colorado. To maximize the potential for settlement or refund, tax agents and commercial property owners often resist providing complete information for as long as possible because after the CBOE hearing, (a) the value of the property cannot be raised to its actual value, even if a higher value is warranted; (b) if the owner prevails upon appeal and the County must pay a refund plus any interest owed, the interest amount on any refund only increases over time; and (c) the longer a case remains in litigation, the higher the cost and risk to the County and the more likely the County is to settle. As such, owners and tax agents have an incentive to withhold information as long as possible, and in turn, to delay the resolution of an appeal as long as possible to maximize the potential refund interest. Since the parties pay their own costs, there is a risk and reward imbalance that should be scrutinized.

**4.) Proposed Solution/Legislative Remedy to this issue.**

Eagle County proposes a solution to this issue is to tie the interest rate for tax refunds to a market-based indicator such as the average federal funds rate for the tax year being challenged, so that the local governments are not liable for more than could be earned on the money being held during the pendency of a tax appeal. The current rates are approximately 5 to 5.5% per year, as opposed to 12% per year.

**5.) Have you explored a non-legislative solution to this problem?**

n/a

**6.) Statutory Citation to be modified AND proposed/revised language (The Colorado Revised Statute is available for free at [this link](#), by selecting “Colorado Revised Statutes”).**

Eagle County proposes that C.R.S. §§ 39-8-109 and 39-10-114 be amended to specify a new interest rate for refunds of taxes through both the protest and adjustment process and the abatement and refund of taxes process.

**7.) Relationship of this issue to County Commissioner’s roles and/or authorities.**

County commissioners serve as their local board of equalization under the protest and appeal process and also approve requests for abatement and refund of taxes.

**8.) Has this proposal been approved by the Board of County Commissioners?**

Yes.

**9.) List any potential Proponents/Opponents & their perspective; indicate any groups/individuals with whom you have already discussed this issue.**

Tax agent groups will likely oppose this proposal.

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10.) **Have you visited with your legislator(s) about this proposal? What was their reaction? Are members of your delegation likely to sponsor, support, or oppose this proposal?**

Not yet.

11.) **Anticipated Fiscal Impact (to counties, state, other stakeholders, etc.).**

Unknown at this time.

12.) **Please list the local subject matter experts CCI staff can follow-up with for more information on this proposal.**

Christina Hooper, Deputy County Attorney – (970) 328-8685

Jill Klosterman, Chief Financial Officer – (970) 328-3511

Teak Simonton, Eagle County Treasurer – (970) 328-8868

13.) **If your county is submitting multiple issue forms, please rank each issue.**

L&E modification - #1

Tax appeal refund interest- #2

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