

Summary of the Gallagher Amendment and the Gallagher Adjustment Particularly Pertaining to Special Districts

Prepared by Colorado Springs Comprehensive Planning Division for general background, and not represented as being complete or as a legal analysis

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Background on the Gallagher Amendment

The **Gallagher Amendment** was an amendment to the Colorado Constitution (Sections 3 and 15 of Article X) enacted in 1982 concerning property tax. It set forth the guidelines in the Colorado Constitution for determining the actual value of property and the valuation for assessment of such property. The Gallagher Amendment was a legislative referendum drafted by Dennis J. Gallagher, then a state legislator.

This amendment made a number of important changes to the way property taxes are applied in Colorado.

In particular, it required the General Assembly to determine the percentage of the aggregate statewide valuation for assessment of various classes of property commencing January 1, 1985. Specifically, the General Assembly would be required to adjust the assessment percentage for residential property to ensure that the percentage of the aggregate statewide valuation for residential property in relation to other taxable property would remain the same as that in the prior year, except for increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production. This particular provision has become known as the **Gallagher Adjustment**. The impact is that 45% of the total amount of property tax must come from residential property, and 55% must come from commercial (non-residential) property. Additionally, the Amendment fixes the assessment rate for commercial property at 29% of market value, requiring the residential assessment rate to fluctuate in order to keep the 45/55 split constant. Since 1985, the residential assessment rate determined by Gallagher Adjustment has dropped from 21.0% to 7.20%. Following a number of recalculations in the 1980s and 1990s. This ratio had been unchanged at 7.96% for several years before it was recently adjusted downward to 7.20%. The current effect of Gallagher is that most taxable non-residential properties and improvements are now taxed at four times the rate of residential properties, when calculated on a market value basis. This has a host of implications, including but not limited to impacts on special financing districts.

Under the Gallagher Amendment most vacant, non-agricultural properties are assessed at the 29% rate. Qualifying agricultural properties are assessed on an entirely different (and typically much lower) basis related to the productive value of the land rather than its market value.

Gallagher Adjustment Related to City of Colorado Springs Special District Policy

Across the State, most general purpose local governments (i.e. counties, cities and towns) allow for and incorporate their versions of a “Gallagher Adjustment” related to the mill levy caps they approve or allow for in conjunction with the creation of district including metropolitan districts and business improvement districts (BIDs). The basic premise is that these adjustments keep the districts “revenue neutral” in the event Gallagher ratios change at the State level. This can be particularly important for districts that are issuing or have issued debt based on an assumed combination of tax rates and projected market values. By their nature, essentially all Gallagher adjustments to mill levy caps apply these prospectively (meaning that a previously approved mill levy cap can be adjusted on forward-going basis to maintain revenue neutrality with respect to Gallagher. Some counties and municipalities have recently allowed for mill levy cap increases at the time of creation to essentially allow newly created residential districts to maintain parity with districts that were created earlier. Stated another way, a new district is allowed to start with a higher initial cap than older districts, because the older district had the opportunity to Gallagher adjust their original cap.

Up until now, district-related Gallagher adjustments in mill levy caps, have had direct relevance only for districts with residential properties. However, in the future it is possible that the changes in ratios could reverse such that district-related Gallagher adjustment would be triggered for a non-residential district (including all BIDs).

The City’s 2006 Special District Policy contemplates “Gallagher adjustments” in paragraph 4 below:

5. *“Any proposed District must commit to the City that its mill levy dedicated to repaying any bonded debt will not exceed the greater of 30 mills for residential properties or 50 mills for commercial properties and may be Gallagher adjusted (or otherwise adjusted) to the extent permitted by law. The maximum allowed for operating is 10 mills for both residential and commercial properties which may be Gallagher adjusted (or otherwise adjusted) to the extent permitted by law”.*

In 2006 City of Colorado Springs modeled its Model Service Plans on those of Aurora Colorado at the time. For all of the maximum mill levy caps (debt service and operational and residential and commercial), mill levy adjustments are allowed for based on the following language.

“a) The Maximum Debt Mill Levy shall be 30 mills; provided that if, on or after January 1, 2006, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board of the issuing District in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenue generated by the mill levy, as adjusted for changes occurring after January 1, 2006, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation”

Recommendations:

- 1) Based on input from our City Attorney's Office the appropriate interpretation of the current language in the City's Model Service Plans is that to be fully consistent with that document, the maximum initial debt service and operational mill levies for new districts need to be either 30.0 or 50.0 mills respectively for residential and commercial districts. These mill levy caps would be subject to forward Gallagher adjustments. However, a petitioner is free to request higher starting mill levy caps based on changes in the State Gallagher adjustment after January 1, 2006.
- 2) If direction is provided to revise the Special District Policy and/or the Model Service Plans either comprehensively or pertaining just to this topic, the current Gallagher adjustment language should be updated and clarified. The topic of revenue parity for new versus existing districts should be specifically addressed.