

39-1-301. Levies reduced - limitation.

(1) (a) All statutory tax levies for collection in 1989 and thereafter when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule except as provided in this subsection (1), and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent plus the amount of revenue abated or refunded by the taxing entity by August 1 of the current year less the amount of revenue received by the taxing entity by August 1 of the current year as taxes paid on any taxable property that had previously been omitted from the assessment roll of any year, except to provide for the payment of bonds and interest thereon, for the payment of any contractual obligation that has been approved by a majority of the qualified electors of the taxing entity, for the payment of expenses incurred in the reappraisal of classes or subclasses ordered by or conducted by the state board of equalization, for the payment to the state of excess state equalization payments to school districts which excess is due to the undervaluation of taxable property, or for the payment of capital expenditures as provided in subsection (1.2) of this section. For purposes of this subsection (1), the amount of revenues received as taxes paid on any taxable property that had been previously omitted from the assessment roll shall not include the amount of such revenues received as taxes paid on oil and gas leaseholds and lands that had been previously omitted from the assessment roll due to underreporting of the selling price or the quantity of oil or gas sold therefrom. In computing the limit, the following shall be excluded: The increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to new construction and personal property connected therewith, as defined by the property tax administrator in manuals prepared pursuant to section 39-2-109 (1) (e), C.R.S., within the taxing entity for the preceding year; the increased valuation for assessment attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if said increase in volume of production causes an increase in the level of services provided by the taxing entity; and the increased valuation for assessment attributable to previously legally exempt federal property which becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) For property tax years beginning on or after January 1, 1991, any taxing entity may apply to the division of local government in the department of local affairs for authorization to exclude the following from the computation of the limitation set forth in paragraph (a) of this subsection (1): All or any portion of the increased valuation for assessment attributable to new primary oil or gas production for the preceding year from any producing oil and gas leasehold or land if such oil and gas leasehold or land is wholly or partially within the taxing entity and if such new primary oil or gas production has caused or will cause an increase in the level of services provided by the taxing entity.

(c) Any application submitted by a taxing entity pursuant to paragraph (b) of this subsection (1) shall contain the following information:

(I) An explanation of the causal relationship between the new primary oil or gas production specified in paragraph (b) of this subsection (1) and the increase in the level of services provided or to be provided by the taxing entity;

(II) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is authorized;

(III) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is not authorized;

(IV) The nature and amount of the expenditures which would be made from any increased amount of revenues collected if said exclusion is authorized.

(d) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government may grant or deny authority to the taxing entity to exclude all or any portion of such increased valuation for assessment specified in paragraph (b) of this subsection (1). Any authorization granted pursuant to this paragraph (d) shall specify the amount of such valuation for assessment which may be excluded. If said exclusion is authorized by said division, the taxing entity shall deposit any increased amount of revenues collected as a result of said exclusion into a fund created by the taxing entity which shall consist solely of such revenues. Moneys in such fund shall be used exclusively for any increase in the level of services provided by the taxing entity which occurs as a result of the new primary oil or gas production specified in paragraph (b) of this subsection (1).

(e) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government shall provide a copy of such application to the oil and gas operators of record wherein the taxing jurisdiction the increased valuation from new primary oil and gas production has occurred.

(f) Standing to challenge any determination made by the division of local government pursuant to this subsection (1) shall be limited to the owners of taxable property located wholly or partially within the taxing entity on the date the taxing entity is granted or denied authorization to make an exclusion pursuant to this subsection (1).

(1.2) (a) The limitation provided for in subsection (1) of this section shall not apply for the purpose of raising revenue to pay for capital expenditures. Such revenue shall not be included in determining the limitation in following years. For the purposes of this paragraph (a), "capital expenditure" means an expenditure made by a taxing entity for long-term additions or betterments, which expenditure, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. This paragraph (a) shall apply to counties, cities, and towns.

(b) If a county imposes an increased mill levy pursuant to paragraph (a) of this subsection (1.2) for a one-time, nonrecurring expenditure for a county road or bridge capital project or county road or bridge capital asset, the county may also request that the division of local government waive application of the provisions of section 43-2-202 (2), C.R.S., to the revenue received from that increased levy. In that event, said division shall notify the governing body of each municipality in the county of the request and of the period of time, not less than twenty days, during which the division will receive comment on the request. In considering whether to waive application of said section 43-2-202 (2), the division shall consider, among other relevant matters, the benefit of the project or asset to the municipalities in the county, the need for the project or asset, and alternative methods of and timing for financing the project or asset. No approval for such waiver shall be granted or continued until the division determines that the property tax revenues in the road and bridge fund, excluding the revenues from such increased levy, for the year for which the increase is imposed bear at least the same proportion to all countywide property tax revenues as in the immediate prior year budget.

(c) Any decision to exceed the limitation for the purpose of raising revenue for capital expenditures pursuant to this subsection (1.2) shall conform with the advertising and public hearing requirements of this paragraph (c). No taxing entity may exceed the limitation to raise such revenue unless the governing board of such taxing entity has advertised its intention to do so and unless such excess has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (c) shall be in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity and shall appear twice therein. The second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider increasing your property taxes for capital expenditures". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter. Such advertisement shall also state what the property taxes would be without such excess and what the property taxes will be with such excess and the percentage difference between such property taxes. Any public hearing held pursuant to this paragraph (c) shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by the board conducting the hearing. Prior to the conclusion of the public hearing, the governing board of the taxing entity shall publicly announce the percent by which the mill levy required to raise such excess exceeds the mill levy computed without such excess.

(1.3) Repealed.

(1.5) All property tax revenues, except such revenues as are exempted in subsection (1) of this section, raised from any property tax levied by a taxing entity which is subject to this section, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation imposed by this section. The limitation shall be applied to such aggregate property tax revenues. However, such aggregate amount shall not include any property tax revenue which is raised by or on behalf of a district, authority, or area which is within but is not comprised of the entire taxing entity and which is raised by a tax upon only property within such district, authority, or area; such property tax revenue is subject to a limitation independent of the limitation which is applied to the taxing entity within which such district, authority, or area is located. No statute establishing a set mill levy or establishing a maximum mill levy or authorizing an additional mill levy for a special purpose shall be construed as authorizing the taxing entity to exceed the limitation imposed by this section.

(1.7) For property tax years commencing on or after January 1, 1988, any taxing entity which is subject to the provisions of this section shall not levy any property tax for purposes which are exempt from the limitation imposed by subsection (1) of this section in an amount which is greater than the amount of revenues required to be raised for such purposes during any year as specified by the provisions of any contract entered into by such taxing entity or any schedule of payments established for the payment of any obligation incurred by such taxing entity. Where bonds, contractual obligations, or capital expenditures have been approved, but actual revenues required for such purposes are not known at the time the levy is set, the taxing entity may base its levy on the estimated revenues which are so required for one year only and in subsequent years the levy shall be based on the actual revenues which are so required. Nothing in this subsection (1.7) shall preclude refunding of any obligation or contract.

(2) If an increase over said limitation is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing entity under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the limitation in the following year. However, any portion of such increased revenue which is allowed as a capital expenditure pursuant to section 29-1-302 (1.5) shall not be included in determining the limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

(4) In the event of a consolidation or merger, in whole or in part, of two or more political subdivisions or taxing entities, the surviving entity or the entity assuming service responsibilities shall use a direct proportion of the combined entities' prior year property tax revenues as the base for computing the limitation in the year first succeeding such consolidation or merger.

(5) Repealed.

(6) Where a taxing entity exceeds the limitation imposed by subsection (1) of this section during any year, the division of local government shall order a reduction in the authorized revenue of the taxing entity for the subsequent year in an amount which offsets the excess revenues levied in the preceding year. Such order shall be preceded by notice to the taxing entity of the proposed order and an opportunity for the taxing entity to respond prior to issuance of the order.

Source: **L. 13:** p. 560, § 11. **L. 15:** p. 403, § 1. **L. 17:** p. 429, § 1. **C.L.** § 7214. **L. 29:** p. 546, § 1. **L. 31:** p. 701 § 1. **CSA:** C. 142, § 39. **L. 52:** p. 142, § 1. **CRS 53:** § 36-3-2. **L. 55:** p. 253, § 1. **C.R.S. 1963:** § 88-3-1. **L. 69:** p. 1053, § 24. **L. 70:** p. 378, § 3. **L. 71:** p. 957, § 1. **L. 76:** Entire section amended, p. 685, § 1, effective July 1. **L. 80:** (1.2)(a) added, p. 678, § 2, effective May 25; (1) amended, § 1, effective June 3; (1) amended, § 3, effective October 3. **L. 81:** (1) and (2) amended and (1.3) and (1.5) added, p. 1395, § 5, effective June 19; (1) amended, p. 1612, § 6, effective June 19. **L. 83:** (1) amended and (1.2) added, p. 1199, § 1, effective May 25; (1) amended, p. 1196, § 1, effective June 3; (1) amended, p. 2085, § 3, effective October 13. **L. 85:** (1.2)(c) amended, p. 1024, § 1, effective July 1. **L. 86:** (1), (1.2)(a), (1.2)(c), (1.5), and (2) amended and (1.3) R&RE, pp. 1021, 1023, §§ 2, 3, effective May 16. **L. 87:** (1) amended, p. 1178, § 1, effective April 16; (1.2)(a), (1.5), and (4) amended, p. 1181, § 1, effective April 30; (1.2)(c) amended, p. 1184, § 1, effective May 1. **L. 88:** (1) and (1.3) amended and (5) added, pp. 1099, 1268, §§ 1, 3, effective May 29; (1) and (1.3) amended and (1.7) and (6) added, p. 1279, § 3, effective January 1, 1989. **L. 89:** (1) amended, p. 1467, § 35, effective June 7. **L. 90:** (1) amended, p. 1704, § 39, effective June 9. **L. 91:** (1) amended, p. 1969, § 1, effective April 19. **L. 93:** (1)(a) amended, p. 1281, § 1, effective June 6. **L. 96:** (1)(a) amended, p. 16, § 1, effective February 22.

Editor's note: (1) Amendments to subsection (1) by House Bill 81-1320 and House Bill 81-1613 were harmonized.

(2) Amendments to subsection (1) by House Bill 83-1011 and House Bill 83-1405 were harmonized.

(3) Subsection (1.3)(c) provided for the repeal of subsection (1.3), effective June 30, 1991. (See L. 88, p. 1279.) Subsection (5)(c) provided for the repeal of subsection (5), effective January 1, 1991. (See L. 88, p. 1268.)

(4) Amendments to subsection (1) by Senate Bill 88-184, House Bill 88-1016, and Senate Bill 88-126 were harmonized.

(5) Amendments to subsection (1.3) by House Bill 88-1016 and Senate Bill 88-184 were harmonized.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, § 600.

C.J.S. See 20 C.J.S., Counties, §§ 230, 231; 64 Municipal Corporations, § 1986.

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988).

Decreased debt service not offset against revenue increase to reduce increase and avoid special election. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. *Stegon v. Pueblo W. Metropolitan Dist.*, 198 Colo. 128, 596 P.2d 1206 (1979).

County exempt from the five and one half percent revenue limitation of this section where voters had approved a ballot question allowing the county to keep all property tax revenues generated by its existing mill levy even though the ballot question did not specifically refer to that limitation. *Wilber v. Bd. of County Comm'rs of County of La Plata*, 42 P.3d 49 (Colo. App. 2001).

Applied in *Tihonovich v. Williams*, 196 Colo. 144, 582 P.2d 1051 (1978); *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).