



**Jonathan Bender**

Partner  
303.295.8456  
Denver  
jsbender@hollandhart.com



**Colin J.A. Oldberg**

Associate  
303.295.8175  
Denver  
cjoldberg@hollandhart.com

# Colo. Ballot Measure Will Help Fix Property Tax Regime

**Insight — 10/14/2020**

## **Law360**

Colorado property taxes provide the primary funding for local government services, including fire and police protection, hospitals, transportation, and a significant portion of K-12 schools.

Since 1982, three constitutional amendments — the Gallagher Amendment, the Taxpayer's Bill of Rights, or TABOR, and Amendment 23 — have worked in tandem, and often against one another, to prevent the Colorado General Assembly from directing badly needed resources to areas that need it most.

Amendment B, currently on the ballot for Colorado voters, would repeal only Gallagher but be an important first step to provide the general assembly with the flexibility needed to responsibly allocate resources.

The Gallagher Amendment, adopted in 1982, mandates that state legislators must adjust the assessment rate of residential real property to ensure that the taxable values of residential real property and nonresidential real property comprise constant portions of all taxable real property in Colorado. It also fixes the nonresidential property tax rate at 29%.

Since 1985, Gallagher has required that taxable residential property values make up about 45% of total taxable property in Colorado and nonresidential property values make up the remaining 55%.

These percentages accurately reflected the residential and nonresidential portions of all taxable real property that existed in 1985, but because residential property values have increased faster than nonresidential property values, actual property values have not tracked the 45-55 ratio required by Gallagher. Today, they are closer to 80-20.

As a result, legislators are typically forced to decrease the assessment rate for residential property to maintain the 45-55 ratio, resulting in overall less property tax revenue for certain, mostly rural counties.

Amendment B would remove the provisions requiring the Legislature to maintain the 45-55 ratio. It would also remove the 29% nonresidential property tax assessment rate requirement, leaving the assessment rates as they are currently defined by statute.

Gallagher was introduced when residential property tax assessment rates were skyrocketing. The goal was to lower residential property tax

assessment rates, which it has certainly accomplished.

In fact, the residential property tax rate has declined in almost every adjustment cycle since Gallagher was introduced, from 21% in 1985 to 7.15% today. That trend is expected to continue, as residential property values continue to increase faster than nonresidential property values.

Without question, repealing Gallagher would eventually result in higher residential property taxes by preventing future decreases in the residential property tax assessment rate. For example, if assessment rates and mill levies stay the same and residential property values continue to increase, then the taxes homeowners pay will increase.

But the benefits of repeal outweigh the drawback of potential increase in residential property taxes for several reasons.

First, Gallagher requires that taxable values of residential real property and nonresidential real property comprise constant portions of all taxable real property, and the long-term effect has been to decrease property tax assessment rates on residential property.

This has generally reduced the amount of tax collected, especially in rural counties, which results in less money going to local governments. These governments are required to provide 39% of public school funding, and when local governments cannot meet this threshold, it puts pressure on the state to fill in the gaps.

Second, TABOR, approved in 1992, generally requires voter approval for tax increases in Colorado and limits the amount of revenue that Colorado can retain and spend. For schools, this means that the residential property tax assessment rate cannot be increased without voter approval, which is important because revenue collected from residential property taxes goes straight to local government services like schools.

So, in an adjustment period in which the residential assessment rate would ostensibly be increased — say, for example, because residential values have skyrocketed far faster than nonresidential values — TABOR prevents the increase without voter approval. Combined with Gallagher's forced 45-55 ratio, this usually means that overall revenues collected from property tax decline, especially in rural counties where property values may not be increasing.

Finally, Amendment 23, adopted in 2000, demands that per-pupil funding must annually increase by at least inflation. With Gallagher and TABOR in play, however, it's often not possible for local governments and the state to meet this requirement and also meet other budgetary obligations.

Especially in years in which state revenues decline, as in recession or perhaps pandemic years, the combined effect of these three amendments is particularly acute for public-school funding.

Repealing Gallagher will also benefit small-business owners. As residential

property values have increased far faster than nonresidential property values during Gallagher's lifespan, residential property owners have paid less and less tax compared to nonresidential property owners.

Small-business owners currently pay tax at a rate four times higher than residential property owners. Especially during economically strained times, this has the potential to shutter many small businesses.

Gallagher is no longer necessary to achieve its primary purpose of keeping residential property taxes low. Colorado has one of the lowest residential property tax assessment rates in the nation, and thanks to TABOR, that assessment rate is not going up anytime soon.

Public services such as schools, as well as small business owners, feel the effects of Gallagher most sharply. It's time to take the first step toward providing the General Assembly with the flexibility and discretion it needs to responsibly allocate tax revenues to areas that need it most.

---

*Jonathan S. Bender is a partner and Colin J.A. Oldberg is an associate at Holland & Hart LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

*Reprinted with permission from Law360. Further duplication without permission is prohibited. All rights reserved.*

---

*This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.*