COLORADO TREASURERS’ ASSOCIATION
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POSSESSORY INTEREST
PROPERTY and VALUATION
POSSESSORY INTERESTS

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What is a Possessory Interest and How is it Treated for Ad Valorem Taxation?
What is a Taxable Possessory Interest and Why is it Subject to Property Taxation?

• Private use of government property

• What about possessory interests in private property?

• Arose first with mining claims and grazing lands in California

• Colorado – 1972 – Mesa Verde

• Fairness issue – private users of private property pay pass through property tax

• Revenue generation for government
Colorado PI History

- 1972 – Mesa Verde I: Taxable (Colo. Sp. Ct.)
- 1989 – Legislature: Exempt
- 1996 – Legislature: Exempt
- 2001 – Vail Assoc.: Taxable (Colo. Sp. Ct.)
Possessory Interests in Personal Property?

Colorado – Applies to Both Real and Personal Property

Personal Property – 39-1-103(17)(a)(II)(A), C.R.S.
- Exempt if total value per taxpayer per county is less than $7,300 – 39-3-119.5, C.R.S.
Does Size Matter?

**Not in Colorado**

- Referendum R – 2010
  Exempt PI if Actual Value is Less Than $6,000
  Voted Down by 62% to 38%
PI Valuation Procedures Do Not Apply -

- Oil and Gas Leaseholds and Lands
- Producing Mines
- Equities in State Lands
- Public Utilities
Fiscal Impact of Possessory Interests?

• 2014 Total Actual Value: $292,323,555
• 0.09% of Colorado Total Actual Value

• Denver County: $114.8 Million
• Eagle County: $31.2 Million
• Pitkin County: $20.9 Million
• Grand County: $20.3 Million
Classic Test for a Possessory Interest


Private Use of Government Property Must Exhibit Significant Incidents of Private Ownership
Classic Test for a Possessory Interest

• *Eagle County BOCC v. Vail Associates, Inc.*, 19 P.3d 1263 (Colo. 2001)
  – Independent Revenue Generating Capability
  – Exclusivity
  – Duration

Not a Management Contract – *United States v. Colorado*, 627 F.2d 217 (10th Cir. 1980)
Independent Revenue Generating Capability

(Cantina Grill v. Denver)

NOT a taxable PI if:

1. Govt pays a fee?
2. Govt controls prices or restricts profits?
3. Govt provides supplies, equipment and improvements?
4. Govt responsible for maintenance expenses?
5. Govt has sufficient control and supervision of operation?
Legal Underpinnings of Possessory Interest Tax in Colorado

1. Colorado Legislature: 39-1-103 (17), C.R.S.


3. Colorado Division of Property Taxation: Assessors Reference Library, Volume 3, beginning at page 7.63
   - Binding on assessors
Methods to Value Possessory Interests

• Cost – not applicable for PI valuations

• Income – most common method
  – When lease information is available and capitalization and or discount rates can be determined.

• Market – PI sales are rare
Methods to Value Possessory Interest

39-1-103(17)(a)(II)(A) When the cost or income approach is applicable, the actual value shall be determined by the present value of the future annual rents...

Implicit in This Statute – If you have a market approach, use it!
Colorado Statutory Methods to Value Possessory Interests

• **Commercial PI** – Present Worth of Remaining Net Lease Payments, \(39-1-103\ (17)(a)(II)(A), \text{C.R.S.}\)

• **Agricultural PI** – Rent Paid for the Property Tax Year, \(39-1-103\ (17)(a)(II)(A), \text{C.R.S.}\)

• **Ski Area PI** – Direct Capitalization of Annual Fee Paid, \(39-1-103\ (17)(a)(I), \text{C.R.S.}\)
A Typical Income Model

• Actual rent, market rent, percentage rent?
  \( \text{(Colorado Value at Market (economic) Rent, 39-1-103(17)(a)(II)(A), C.R.S.)} \)

• Discount rate (gov’t or lessee perspective?)

• Term – or perpetuity? What interest is being valued: Fee Simple, Leased Fee, Leasehold?
  – If calculated in perpetuity does this method capture value beyond the actual lease term? Over assess?

• Options to renew?
  – Should be considered \( \text{(Not in Colorado, 39-1-103 (17)(a)(II)(A), C.R.S.)} \)
The Market Approach

• Difficult to find direct market comparables

• Example – airport hangars - Routt County Airport
What is **NOT** a Taxable Possessory Interest?

- A car using a public freeway?
- A car using a public toll road?
- A reserved parking space in a public garage?
- Personal season tickets for the Denver Broncos?
- A corporate skybox for the Denver Broncos?
- An individual rafting a river or snowmobiling in the national forest
What are Typical Possessory Interests in Colorado?

Coors Field - Leased by Colorado Rockies Baseball Club from Tax Exempt Stadium District.
What are Typical Possessory Interests in Colorado?

Sports Authority Field at Mile High Stadium - Leased by Denver Broncos from Tax Exempt Stadium District
Mile High Stadium

• Estimated Cost of Construction: $393,044,800

• Possessory Interest Value: $8,168,800
What are Typical Possessory Interests in Colorado?

Retail Kiosk on 16th Street Mall - Permit From City and County of Denver
What are Typical Possessory Interests in Colorado?

Bus Advertising – Agreement With Tax Exempt Regional Transportation District (Personal Property PI)
What are Typical Possessory Interests in Colorado?

Light Rail Advertising – Agreement With Tax Exempt Regional Transportation District
What are Typical Possessory Interests in Colorado?

Civic Center Plaza Office Building — Land Owned by Tax Exempt Regional Transportation District (Land PI)
What are Typical Possessory Interests in Colorado?

Multi-Tenant Office Building — Owned by Tax Exempt State Land Board (Improvement PI)
What are Typical Possessory Interests in Colorado?

Credit Union Branch Lease — Metropolitan State University, Auraria Campus
What are Typical Possessory Interests in Colorado?

Vending Machine Agreement – Metropolitan State University
What are Typical Possessory Interests in Colorado?

Retail Shops at Denver International Airport – Lease From City and County of Denver
What are Typical Possessory Interests in Colorado?

Snow Cat Tours - Permit From U. S. Forest Service
What are Typical Possessory Interests in Colorado?

Snow Mobile Tours - Permit From U. S. Forest Service
What are Typical Possessory Interests in Colorado?

Mountain Guide/Outfitter - Permit From U. S. Forest Service
What are Typical Possessory Interests in Colorado?

**White Water Rafting/Kayaking** - Permit From Bureau of Land Management
What are Typical Possessory Interests in Colorado?

Cattle/Sheep Grazing - Permit From U. S. Forest Service
What are Typical Possessory Interests in Colorado?

Aspen Mountain Ski Area - Permit From U. S. Forest Service
Aspen Mountain Ski Area

2012 Actual PI Value:  $315,767

Land Area:  255 Acres

PI Value/Acre:  $1,238
Published Appellate Court Decisions – Possessory Interest

- Eagle County v. Vail Assoc., 19 P.3d 1263 (Colo. 2001)
- United States v. Colorado, 627 F.2d 217, (10th Cir. 1980)