

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023- 2024, #96</p> <p>Petitioners: SCOTT WASSERMAN and ED RAMEY</p> <p>v.</p> <p>Ballot Title Board: THERESA CONLEY, CHRISTY CHASE, and KURT MORRISON</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioners:</p> <p>Edward T. Ramey, #6748 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 303-949-7676 Email: eramey@TLS.legal</p>	<p>Supreme Court Case No.</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #96</p>	

Scott Wasserman and Ed Ramey (“Petitioners”), through their undersigned counsel, respectfully petition this Court pursuant to §1-40-107(2), C.R.S. (2023), to review the actions of the Ballot Title Setting Board (“Title Board”) in denying relief on two points raised by the Petitioners in their Motion for Rehearing regarding Proposed Initiative 2023-2024 #96 (the “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #96.

Scott Wasserman and Ed Ramey are the Designated Representatives of the Proponents of Proposed Initiative 2023-2024 #96 (“Statewide Tax on Luxury Real Property”). The Proponents submitted their Proposed Initiative to the Title Board for the setting of a title, ballot title, and submission clause pursuant to §1-40-106, C.R.S. (2023), on November 17, 2023.

The Title Board held a hearing on December 6, 2023, at which it proceeded to set a title, ballot title and submission clause for the Proposed Initiative. Proponents filed a Motion for Rehearing regarding several issues on December 13, 2023. The Title Board conducted a rehearing on December 20, 2023, at which it granted in part and denied in part Proponents’ Motion and made changes to the title accordingly. This Petition is filed within seven days of that rehearing pursuant to §1-40-107(2), C.R.S. (2023).

B. Jurisdiction.

Petitioners are timely requesting a review by the Supreme Court of the actions of the Title Board pursuant to §1-40-107(2), C.R.S. (2023), regarding a single issue – addressed in two related points – raised in their Motion for Rehearing.

As required by §1-40-107(2), C.R.S. (2023), attached to this Petition for Review are certified copies of: (1) the final copy of the Proposed Initiative as submitted to the Title Board; (2) the determinations by the Title Board at its initial hearing on the Proposed Initiative on December 6, 2023; (3) the Fiscal Summary for the Proposed Initiative prepared by the Director of Research of the Legislative Council of the General Assembly pursuant to §1-40-105.5(1.5), C.R.S. (2023); (4) the Motion for Rehearing filed by the Petitioners on December 13, 2023; and (5) the determinations by the Title Board at the rehearing on December 20, 2023.

GROUNDS FOR REVIEW

Petitioners respectfully submit that the Title Board erred in its final determinations as follows:

1. The Title Board concluded that it was constrained by paragraph (3)(c) of section 20 of article X of the Colorado Constitution (the “Taxpayer Bill of Rights” or “TABOR”) to commence the title with the language “State taxes shall

be increased” notwithstanding the fact that (a) any potential tax “increase” under the measure would be wholly conditional and completely offset by a concurrent imposition of a separate tax decrease; (b) the amount of any such potential tax is completely indeterminate – even as to its outer limits – and not subject to estimation; and (c) the result of the proposed tax would be a net-zero impact (no increase or decrease) upon overall tax revenues.

2. By incorporating the “mandatory” TABOR tax-increase language, the title confuses the effect of a “yes” or “no” vote and does not express the true intent and meaning of the measure as required by §1-40-106(3)(b), C.R.S. (2023) – a compelled result that the voters could not have intended when they adopted Colo. Const. art. X, §20.

PRAYER FOR RELIEF

Petitioners respectfully request the Court, after consideration of the parties’ briefs and documentation, to reverse the actions of the Title Board in denying Petitioners’ Motion for Rehearing regarding the points noted above, and to return Proposed Initiative 2023-2024 #96 to the Board with the direction to set a new title in conformity with such direction as this Court may issue.

Respectfully submitted this 27th day of December, 2023.

/s/ Edward T. Ramey
Edward T. Ramey #6748
Tierney Lawrence Stiles LLC
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Denver, CO 80203
eramey@TLS.legal
303-949-7676

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2023, I electronically filed this
Petition with this Court via the Colorado Courts E-Filing system and electronically
served a copy upon Counsel for the Ballot Title Board at:

Michael Kotlarczyk
Senior Assistant Attorney General
Public Officials Unit
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Mike.Kotlarczyk@coag.gov
720-508-6187

/s/ Edward T. Ramey

DATE FILED: December 27, 2023 11:00 AM



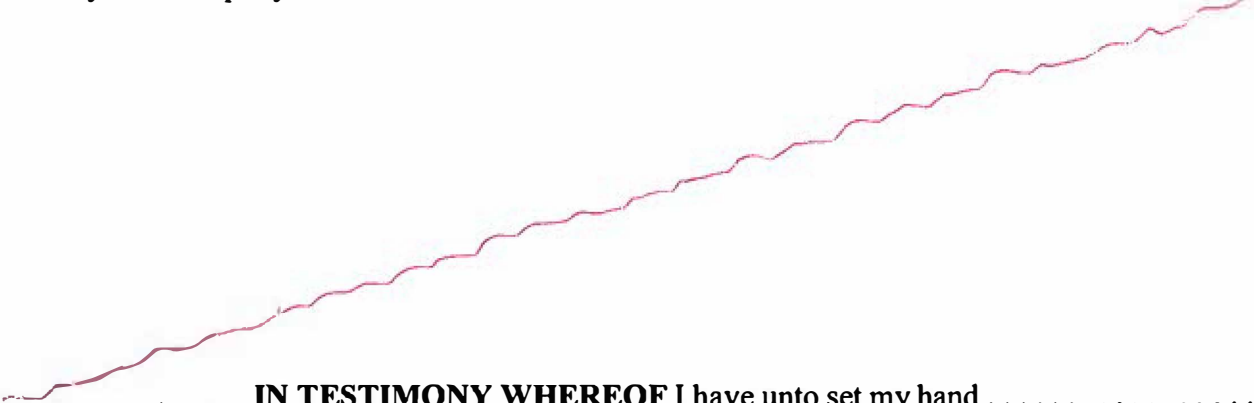
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #96 'Statewide Tax on Luxury Real Property'"



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 21th day of December, 2023.

Jena Griswold

SECRETARY OF STATE



Ballot Title Setting Board

Proposed Initiative 2023-2024 #96¹

The title as designated and fixed by the Board is as follows:

State taxes shall be increased biennially by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes that create a new statewide conditional tax on certain residential real property that applies only when certain conditions are met, and, in connection therewith, removing the constitutional prohibition on any new statewide real property tax in order to create a new conditional statewide tax upon single-family residential real property with a value of at least two million dollars, adjusted for inflation, that will only be imposed in any property tax year in which a statewide limit on property tax revenue causes a reduction in the amount or growth of statewide property tax revenue; requiring that the tax revenue be collected by the state and distributed to local communities to replace revenue otherwise lost by imposition of the statewide limit; and exempting the new tax revenue from the Taxpayer Bill of Rights revenue cap.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall state taxes be increased biennially by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes that create a new statewide conditional tax on certain residential real property that applies only when certain conditions are met, and, in connection therewith, removing the constitutional prohibition on any new statewide real property tax in order to create a new conditional statewide tax upon single-family residential real property with a value of at least two million dollars, adjusted for inflation, that will only be imposed in any property tax year in which a statewide limit on property tax revenue causes a reduction in the amount or growth of statewide property tax revenue; requiring that the tax revenue be collected by the state and distributed to local communities to replace revenue otherwise lost by imposition of the statewide limit; and exempting the new tax revenue from the Taxpayer Bill of Rights revenue cap?

Hearing December 6, 2023:

Single subject approved; staff draft amended; titles set.

The Board made a technical correction to the text of the initiative.

¹ Unofficially captioned “**Statewide Tax on Luxury Real Property**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.
Board members: Theresa Conley, Christy Chase, Kurt Morrison
Hearing adjourned 12:59 P.M.*

Ballot Title Setting Board

Proposed Initiative 2023-2024 #96¹

The title as designated and fixed by the Board is as follows:

State taxes shall be increased conditionally in order to increase or improve levels of public service provided through property taxes by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes that create a new statewide conditional tax on certain residential real property, and, in connection therewith, removing the constitutional prohibition on any new statewide real property tax; creating a new conditional statewide tax upon single-family residential real property worth at least two million dollars, adjusted for inflation, that will only be imposed when a statewide limit on property tax revenue causes a reduction in statewide property tax revenue; requiring that the new tax revenue be distributed to local communities to replace revenue otherwise lost by imposition of the statewide limit; and exempting the new tax revenue from the Taxpayer's Bill of Rights revenue cap.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 12:59 P.M.

Rehearing December 20, 2023:

Motion for rehearing was granted only to the extent the Board made changes to the title (3-0).

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 10:35 A.M..

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF PROPOSED INITIATIVE 2023-2024 #96

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #96

Scott Wasserman and Ed Ramey, Designated Representatives of the Proponents for Proposed Initiative 2023-2024 #96, respectfully submit this Motion for Rehearing pursuant to C.R.S. §1-40-107(1) concerning the title and ballot title and submission clause set by the Ballot Title Setting Board for this initiative at its meeting on December 6, 2023:

1. The title set by the Board commences with the phrase “State taxes shall be increased biennially by an amendment to the Colorado constitution and a change to the Colorado Revised Statutes . . .” Colloquy between the members of the Board and the designated representatives of the proponents clarified that the Board believed itself constrained to use – and commence the title with – this language by article X, section 20(3)(c) of the Colorado Constitution (the “Taxpayer’s Bill of Rights” or “TABOR”). This was notwithstanding the fact that the tax at issue – a conditional statewide “supplemental luxury residential real property tax” – would be:

- (a) wholly conditional upon an at-this point-purely-hypothetical future imposition of a completely separate statewide limitation upon local district property tax revenue;
- (b) completely indeterminate at this point and not subject to estimation even as to the upper limits of either rate or amount; *cf.*, *Bickel v. City of Boulder*, 885 P.2d 215, 235-237 (Colo. 1994); and
- (c) tailored to ensure a net-zero impact on taxes – no net increase or decrease.

2. Incorporation of the inapplicable “taxes shall be increased” language at the forefront of the title renders the title materially misleading to the voters and obscures – in fact substantially misrepresents – the meaning and effect of a “yes” or “no” vote in contravention of the requirements of C.R.S. §1-40-106(3)(b).

3. Even were incorporation of the “taxes shall be increased” language appropriate in the title, the title set by the Board wholly omits the requisite additional information and specified language required by C.R.S. §1-40-106(3)(g).

4. Referring to the proposed voter approval allowing any revenue from the conditional new tax to be excluded from spending limits otherwise applicable per article X,

section 20(7) of the Colorado Constitution as “exempting the new tax revenue from the Taxpayer Bill of Rights revenue cap” incorporates an impermissible catch phrase.

Respectfully submitted December 13, 2023.

_____/s_____
Scott Wasserman

_____/s_____
Ed Ramey

Designated Representatives of the Proponents

Be it Enacted by the People of the State of Colorado:

Section 1. Legislative declaration. We, the voters of the state of Colorado, hereby find and declare that:

1. Placement of limitations upon the growth or amount of revenue that may be assessed, collected, retained, or spent on a statewide basis from the levy of taxes upon real and personal property throughout the state creates a disproportionate and inequitable impact upon local governments and taxing authorities, as well as the residents and businesses in those local communities.

2. These impacts affect not only the local government services – to include schools, fire protection, flood control, transportation, housing, and other services of critical importance to residents and businesses in communities throughout the state – but they inevitably create inequitable spillover impacts upon neighboring communities.

3. These spillover impacts are magnified by the uneven distribution of luxury residential real property in the state, and the effects of such properties upon local and neighboring community property values and available local property tax revenue.

4. The health, welfare, and sustainability of Colorado's local communities is of critical importance to the welfare of the state of Colorado as a whole.

5. The people of the state of Colorado therefore find and declare that adoption of a conditional and supplemental statewide real property tax upon luxury residential real properties throughout the state – such tax to be exempt from any otherwise applicable limitation upon the amount of revenue that may be assessed, collected, retained or spent from the levy of taxes upon real and personal property throughout the state – and the redistribution by the state of such supplemental revenue to local communities on an equitable basis to support their local services – is necessary to preserve and assure the health and welfare of Colorado's local communities.

Section 2. In the constitution of the state of Colorado, section 3 of article X, **add** (1)(e) as follows:

(1)(e). ANY STATEWIDE AND STATE ADMINISTERED PROPERTY TAX LEVIED FOR THE PRIMARY PURPOSE OF ASSISTING LOCAL TAXING AUTHORITIES AND COMMUNITIES TO ADDRESS INEQUITIES IN THE AVAILABILITY OR DISTRIBUTION OF LOCAL PROPERTY TAX REVENUE RESULTING FROM THE IMPOSITION OF ANY STATEWIDE LIMITATION UPON THE AMOUNT OR GROWTH OF THAT REVENUE SHALL BE EXEMPT FROM ANY OTHERWISE APPLICABLE STATEWIDE LIMITATION UPON THE AMOUNT OR GROWTH OF PROPERTY TAX REVENUE.

Section 3. In the constitution of the state of Colorado, section 20 of article X, **amend** (8)(a) as follows:

(8) **Revenue limits.** (a) New or increased transfer tax rates on real property are prohibited. No ~~new state real property tax~~ or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

Section 4. In Colorado Revised Statutes, **add** section 39-1-104.8 as follows:

39-1-104.8. Supplemental tax on luxury residential real property.

(1) Definitions. As used in this section:

(a) “APARTMENT PROPERTY” MEANS ANY RESIDENTIAL REAL PROPERTY, OTHER THAN MULTI-FAMILY RESIDENTIAL REAL PROPERTY, PRIMARILY LEASED OR RENTED BY THE OWNER OR OWNERS TO THIRD PARTIES FOR RESIDENTIAL USE.

(b) “LUXURY RESIDENTIAL REAL PROPERTY” MEANS RESIDENTIAL REAL PROPERTY, EXCLUDING MULTI-FAMILY RESIDENTIAL REAL PROPERTY AND APARTMENT PROPERTY, WITH ACTUAL VALUE, AS DETERMINED BY THE ASSESSOR AND THE ADMINISTRATOR IN THE MANNER PRESCRIBED BY LAW, OF AT LEAST TWO MILLION DOLLARS, ADJUSTED AT THE TIME OF ASSESSMENT FOR INFLATION SINCE THE LAST ASSESSMENT AS DETERMINED BY THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER- AURORA-LAKEWOOD AREA, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

(c) “MULTI-FAMILY RESIDENTIAL REAL PROPERTY” HAS THE SAME MEANING AS SET FORTH IN SECTION 39-1-104.2 (1)(a).

(2) Supplemental luxury residential real property tax. FOR ANY PROPERTY TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2027, IN WHICH THE AMOUNT OF STATEWIDE PROPERTY TAX REVENUE HAS BEEN REDUCED BY IMPOSITION OF A STATEWIDE LIMITATION UPON THE AMOUNT OR GROWTH OF PROPERTY TAX REVENUE, A SUPPLEMENTAL TAX SHALL BE ASSESSED AND IMPOSED BY THE STATE UPON LUXURY RESIDENTIAL REAL PROPERTY IN AN AMOUNT SUFFICIENT TO REPLACE THAT REDUCTION IN REVENUE, AS DETERMINED BY THE ASSESSORS AND THE ADMINISTRATOR IN THE MANNER PRESCRIBED BY LAW. THIS TAX IS IN ADDITION TO ANY OTHER TAX IMPOSED UNDER THIS TITLE 39.

Section 5. In Colorado Revised Statutes, 39-1-112, **amend** (1), and **add** (2), (3), (4), and (5) as follows:

39-1-112. Taxes available – when. (1) Except as otherwise provided IN THIS SECTION AND in article 1.5 of this title, all taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year as collected.

(2) UPON RECEIPT BY A LOCAL TAXING AUTHORITY OF REVENUES FROM SUPPLEMENTAL TAXES LEVIED UPON LUXURY RESIDENTIAL REAL PROPERTY PURSUANT TO SECTION 39-1-104.8 OF THIS TITLE, THE LOCAL TAXING AUTHORITY SHALL REMIT SUCH REVENUES TO THE DEPARTMENT OF THE TREASURY, WHICH SHALL DEPOSIT AND HOLD SUCH REVENUES IN A SEPARATE LUXURY RESIDENTIAL REAL PROPERTY TAX FUND.

(3) ON OR BEFORE JANUARY 1, 2026, THE DEPARTMENT OF LOCAL AFFAIRS SHALL DEVELOP CRITERIA FOR THE REALLOCATION AND DISTRIBUTION OF ALL REVENUE DEPOSITED AND HELD IN THE LUXURY RESIDENTIAL REAL PROPERTY TAX FUND TO THE POLITICAL SUBDIVISIONS OF THE STATE FOR THE SPECIFIC PURPOSE OF REPLACING AND BACKFILLING REVENUE LOST TO LOCAL COMMUNITIES AS A RESULT OF IMPOSITION OF ANY STATEWIDE LIMITATIONS UPON THE AMOUNT OR GROWTH IN AMOUNT OF STATEWIDE OR LOCAL PROPERTY TAX REVENUE. THESE CRITERIA SHALL CONSIDER THE DISPARITIES IN LOCAL PROPERTY VALUES CAUSED BY THE PRESENCE AND DISTRIBUTION OF LUXURY RESIDENTIAL REAL PROPERTIES IN THE STATE, AS WELL AS THE DISPARATE IMPACTS UPON LOCAL COMMUNITIES OF IMPOSITION OF THE STATEWIDE REVENUE LIMITATION.

(4) REVENUE HELD IN THE LUXURY RESIDENTIAL REAL PROPERTY TAX FUND SHALL BE DISBURSED BY THE DEPARTMENT OF THE TREASURY TO THE STATE’S POLITICAL SUBDIVISIONS, ACCORDING TO THE CRITERIA DEVELOPED BY THE DEPARTMENT OF LOCAL AFFAIRS, NO LATER THAN DECEMBER 31 OF EACH YEAR IN WHICH RECEIVED. ALL REVENUE DISTRIBUTED FROM THE LUXURY RESIDENTIAL REAL PROPERTY TAX FUND SHALL BE IMMEDIATELY AVAILABLE FOR EXPENDITURE BY EACH POLITICAL SUBDIVISION UPON RECEIPT FROM THE DEPARTMENT OF THE TREASURY IN SUCH MANNER AS EACH POLITICAL SUBDIVISION MAY DETERMINE.

(5) THE REVENUE RECEIVED AND DISTRIBUTED BY THE DEPARTMENT OF THE TREASURY PURSUANT TO THIS SECTION MAY BE COLLECTED, RETAINED, DEPOSITED AND DISTRIBUTED BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 6. Effective date. This act takes effect January 1, 2025.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Concerning a motion for proposed initiative 2023-2024 #96 – Statewide Tax on Luxury Real Property

I am not asking for a motion for rehearing. Since I'm not asking for the rehearing, I don't know whether I can speak during public testimony at the rehearing for #96.

This letter serves as an opportunity to thank the Title Board for including the language about "taxes shall be increased". Additionally, I greatly appreciate the specific and clear language that informs voters that new revenues would be exempt from the Taxpayer's Bill of Rights.

The term "Taxpayer's Bill of Rights" is not a catch phrase. It is a responsible description that is accurate and allows voters to better understand what #96 does.

Respectfully submitted by:

Natalie Menten

Colorado eligible elector



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: December 5, 2023 **Fiscal Analyst:** Emily Dohrman (303-866-3687)

LCS TITLE: STATEWIDE TAX ON LUXURY REAL PROPERTY

Fiscal Summary of Initiative 96

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State revenue. State revenue will not be impacted by the measure unless a statewide property tax revenue limit is imposed. If a limit is imposed, state revenue will increase by the amount that the limit reduces statewide property tax revenue beginning in FY 2027-28. This revenue is exempt from TABOR as a voter-approved revenue change.

State expenditures. The Department of Local Affairs (DOLA) is responsible for creating criteria for distributing revenue from the luxury property tax to local governments, which is expected to require expenditures of \$46,827 in FY 2024-25 and \$82,313 in FY 2025-26. If a statewide property tax limit is imposed, the state will also be responsible for working with county assessors to determine the total amount of revenue lost due to the property tax limit, determining the necessary tax rate each year, and distributing revenue to local governments. The costs associated with these responsibilities would depend on the distribution criteria developed by DOLA and the characteristics of the statewide property tax revenue limit.

Local government impact. The measure's impact on local governments will depend on whether a statewide property tax limit is imposed in the future. If no limit is imposed, the measure will have a minimal impact on local governments. If a limit is imposed, the measure will increase local government revenue from state distributions of the luxury property tax, with the amounts distributed based on the revenue loss incurred from imposition of the statewide limit. The measure will also increase costs and workload for county assessors to upgrade software, to create a new class of property, and to receive, evaluate, and settle an increased number of valuation appeals from property owners potentially subject to a luxury property tax. Additionally, workload will increase for local taxing authorities who will need to collect the supplemental tax.

Economic impacts. If a statewide property tax limit is adopted and triggers the imposition of a new tax on luxury properties, then owners of residential property valued at more than \$2 million will have less after-tax income available to spend or save, reducing their consumption and investments throughout the economy. Revenue collected from the tax will be distributed to local governments, keeping these governments at approximately the same size that they would have been without the property tax limit. Additional local government revenue may impact the economy depending on how governments choose to spend, save, or refund this revenue.